

(16,833.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 269.

THE ADDYSTON PIPE AND STEEL COMPANY, DENNIS  
LONG & CO., HOWARD-HARRISON IRON COMPANY,  
ANNISTON PIPE AND FOUNDRY COMPANY, SOUTH  
PITTSBURG PIPE WORKS, AND CHATTANOOGA FOUN-  
DRY AND PIPE WORKS, APPELLANTS,

*vs.*

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SIXTH CIRCUIT.

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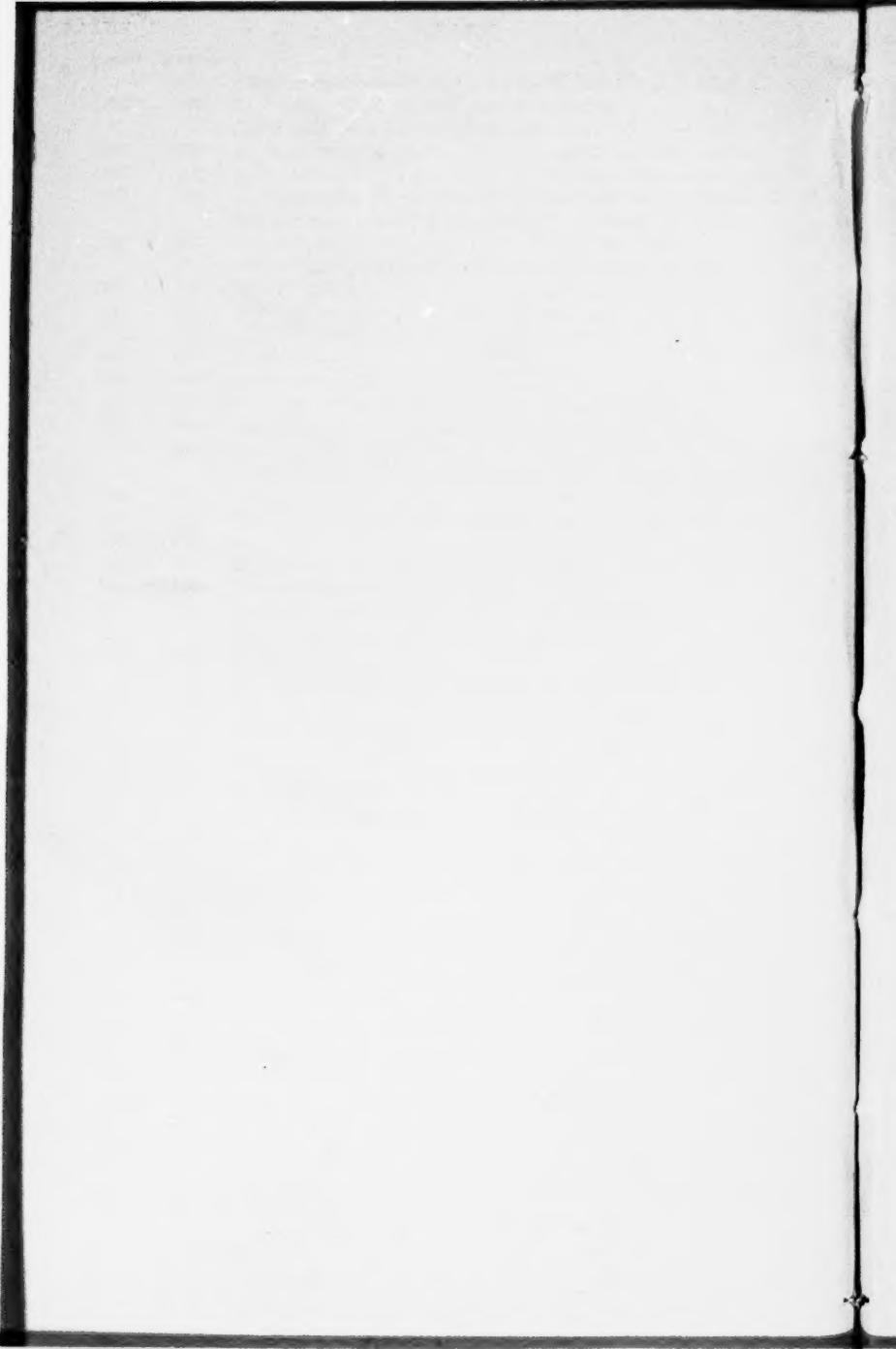
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1 *Transcript of Record.*

UNITED STATES OF AMERICA, }  
*Eastern District of Tennessee, Southern Division,* } <sup>88</sup>:

Be it remembered that at a circuit court of the United States begun and held for the southern division of the eastern district of Tennessee, at the Federal building in the city of Chattanooga, within said district and the sixth circuit, on the first Monday, it being the 5th day of October, A. D. 1896—present and presiding, the Honorable Chas. D. Clark, district judge for the eastern and middle districts of Tennessee—among the proceedings had were the following, to wit:

THE UNITED STATES, by JUDSON HARMON, Its Attorney General, and James H. Bible, the United States Attorney for the Eastern District of Tennessee,

*against*

THE ADDYSTON PIPE & STEEL COMPANY, a Corporation Chartered and Doing Business under the Laws of the State of Ohio and a Resident of said State, with Its Principal Office in the City of Cincinnati, in said State; Dennis Long & Co., a Corporation (or Partnership) Chartered by and Doing Business under the Laws of the State of Kentucky, a Resident of said State, with Its Principal Office in the City of Louisville, Kentucky; Howard-Harrison Iron Company, a Corporation Chartered by and Doing Business under the Laws of the State of Alabama and a Resident of said State, with Its Principal Office at Bessemer, Alabama; Anniston Pipe & Foundry Company, a Corporation Chartered by and Doing Business under the Laws of the State of Alabama and a Resident of said State, with Its Principal Office at Anniston, Alabama; South Pittsburgh Pipe Works, a Corporation Chartered by and Doing Business under the Laws of the State of

In Equity.  
 No. 539.

2 Its Principal Office at South Pittsburgh, Tennessee; Chattanooga Foundry & Pipe Works, a Corporation Chartered by and Doing Business under the Laws of the State of Tennessee and a Resident of said State, with Its Principal Office at Chattanooga, Tennessee.

*Petition.*

(Endorsed :) Filed Dec. 10th, 1896. Henry O. Ewing, clerk.



In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee. In Equity.

To the judges of the circuit court of the United States for the southern division of the eastern district of Tennessee:

THE UNITED STATES, by JUDSON HANSON, Its Attorney General, and James H. Bible, the United States Attorney for the Eastern District of Tennessee, Brings This Its Petition  
*against*

THE ADDYSTON PIPE & STEEL COMPANY, a Corporation Chartered by and Doing Business under the Laws of the State of Ohio and a Resident of said State, with Its Principal Office in the City of Cincinnati, in said State; Dennis Long & Co., a Corporation (or Partnership) Chartered by and Doing Business under the Laws of the State of Kentucky, a Resident of said State, with Its Principal Office in the City of Louisville, Kentucky; Howard-Harrison Iron Company, a Corporation Chartered by and Doing Business under the Laws of the State of Alabama and a Resident of said State, with Its Principal Office at Bessemer, Alabama; Anniston Pipe & Foundry Company, a Corporation Chartered by and Doing Business under the Laws of the State of Alabama and a Resident of said State, with Its Principal Office at Anniston, Alabama; South Pittsburg Pipe Works, a Corporation Chartered by and Doing Business under the Laws of the State of Tennessee and a Resident of said State, with Its Principal Office at South Pittsburg, Tennessee; Chattanooga Foundry & Pipe Works, a Corporation Chartered by and Doing Business under the Laws of the State of Tennessee and a Resident of said State, with Its Principal Office at Chattanooga, Tennessee.

3      Petitioner charges:

1.

That defendants, and each of them, are and have been for several years engaged in the manufacture of cast-iron pipe, a commodity in general use by the public throughout the country, and necessary for drainage and sewerage purposes, and used especially by gas and water companies and by municipal corporations.

2.

Defendants are all residents of that portion of the country where pig iron and fuel and all elements entering into the production of cast-iron pipe are cheaper, and where said cast-iron pipe can be made at less cost to the manufacturer than any place else.

3.

Petitioner further charges that defendants are the only persons engaged in the manufacture of cast-iron pipe, and who have capacity to supply the demand and fulfill the contracts, in the following States and Territories, to wit: Alabama, Arizona, California,

Colorado, North Dakota, South Dakota, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Indian Territory, North Carolina, South Carolina, New Mexico, Minnesota, Michigan, Tennessee, Texas, Illinois, Wyoming, Indiana, Ohio, Utah, Washington, Oregon, Iowa, West Virginia, Nevada, Oklahoma and Wisconsin, being 36 States and Territories, and embracing that portion of the United States that is most rapidly developing, and where said cast-iron pipe is most largely used. There are a few other pipe works located in the above Territory, but for want of capacity they are unable to compete with defendants, and by reason of the conduct on the part of defendants hereinafter mentioned, they have been practically driven out of the market in said Territory.

## 4.

Petitioner charges, upon information that it believes to be true, that defendants, in order to monopolize the trade in cast-iron pipe, especially in the above named States and Territories, and force the price of the same to an unreasonable and exorbitant rate, and destroy all competition in regard thereto, and force the public

4 to pay exorbitant and unreasonable prices for said cast-iron pipe, did, on or about the 28th day of December, 1894, in the city of Chattanooga, Tennessee, by and through their regular appointed and qualified officers, agents and representatives, enter into a contract or combination, in the form of trust or conspiracy, in restraint of trade or commerce among the several States and Territories above named, in regard to the manufacture and sale of said cast-iron pipe, which said fraudulent and criminal conspiracy was entered into in violation of law, and in defiance of the same, and was intended by defendants to enable them to defraud the public in the purchase and use of the pipe manufactured by them. The name of this criminal and unlawful conspiracy is the "Associated pipe works," and its members are the defendants above named. Petitioner charges, upon information and belief, that defendants are now, and have been since said 28th day of December, 1894, operating their shops in obedience to and according to the agreement entered into on said date, and are now engaged in selling and shipping from their shops said cast iron pipe into other States and Territories than the States and Territories in which defendants reside, and under contracts entered into with citizens of such other States and Territories.

## 5.

Petitioner further charges that it was a part of said fraudulent and criminal combination and conspiracy aforesaid, that there should be no competition among defendants as to any work done or pipe furnished in any of the States and Territories above named, and in order to make effectual this criminal purpose, it was agreed that upon all work done in the territory named, a "bonus" should be charged on every ton of pipe sold, the amount of said "bonus" being determined by how much the combination could force the customer to pay, and petitioner here charges that defendants have

collected a "bonus" ranging from three to nine dollars on every ton of pipe sold since the date the trust was formed. The "bonus" represents the amount charged for pipe over and above a reasonable and fair price for same, and above the price that defendants would be willing to sell for, if the trust or combination did not exist, and they have to compete with each other for the work.

Petitioner charges that the output of the shops belonging to the six defendants above named, amounts to about 220,000 tons of pipe annually, and this multiplied by the average "bonus" received, of six dollars per ton, amounts to one million three hundred and twenty thousand dollars, so your honors may get some idea of the immense benefits derived by defendants from their fraudulent, criminal and unlawful combination, and see to what extent the public has been, and is being, robbed and plundered by reason of the existence of the trust aforesaid.

Petitioner is informed and believes, and upon such information charges, that the amount of pipe sold and shipped by defendants for this year, 1896, will exceed said amount of 220,000 tons, nearly all of which has been sold and shipped according to the terms and under the agreement entered into between defendants on said 28th day of December, 1894; and defendants are still and now engaged in the sale and shipment of the same to the States and Territories other than in which they reside.

## 6.

The above-named States and Territories were designated by defendants in their conspiracy as "pay territory" and all territory not included in the above was called "free territory." In "pay territory," except as to certain cities, known as "reserved cities" where all the pipe was to be furnished, by some particular shop, a "bonus" of so much per ton was fixed on all pipe sold and either of defendants were allowed to solicit work and furnish pipe at any price it saw proper, but it had to account to the pool or trust, for the "bonus," agreed upon for that particular State. It made no difference at what price the work was done, and these "bonuses" were remitted from one to another every two weeks, each sharing in the profit represented by the "bonus," although they may have had nothing to do with the work. This arrangement kept one from competing with the other, the incentive not to do so being that they would divide the "bonus" received, and, as petitioner charges, prevented the public from obtaining the pipe at a fair and reasonable price.

## 7.

To make said fraudulent and unlawful criminal conspiracy effectual, and in order to deprive the public of their right to obtain said cast-iron pipe at a fair and reasonable price, petitioner further charges that it was a part of the agreement that defendant should, at once, notify all parties to whom they had made quotations, withdrawing the same, and accept no orders after that date on quotations

6 sent out before the conspiracy was entered into, and petitioner charges that said defendants did, at once, withdraw said quotations where they had sent them out, and at once prepared new quotations for the territory embraced in their combine, advancing the price of pipe from three to nine dollars on every ton, and this too, at a time of untold financial depression, and when there had been no increase in the wages of labor, or the cost of any of the materials used in the manufacture of said pipe, and they have been receiving this price for their pipe from that date to the present time.

## 8.

It was furthermore a part of said fraudulent combination, which petitioner avers has been strictly carried out, that all the pipe for certain cities in the above-named territory was to be divided between defendants. For instance, Anniston pipe works was to supply Atlanta; Howard-Harrison Iron Company Birmingham and St. Louis; Chattanooga foundry & pipe works, Chattanooga and New Orleans; South Pittsburg pipe works, Omaha; Dennis Long & Co., Louisville and certain cities in Indiana; while Addyston Pipe & Steel Co. was to supply Cincinnati and certain other cities in Ohio and Kentucky. Petitioner does not pretend to give all the cities allotted under said criminal agreement.

Petitioner charges that when an inquiry was received by defendants for work in any of the "reserved cities" they, of course, knowing which of defendants was to have the job, would at once ask the defendant to whom the city was allotted what price to "protect" as it was called, meaning thereby to ask said shop to notify it what its bid would be, so that a higher bid might be sent in. On receipt of such an inquiry the defendant that was to do the work would at once notify all the other defendants the price it intended to bid, or at which it wanted "protection," and the other defendants would each send in a bid at some higher figures, insuring the job to the defendant agreed upon, and insuring to themselves a division of a large "bonus" and making the price to the consumer unfair and unreasonable, and destroying all competition in regard thereto.

## 9.

Petitioner further shows and charges that the kinds of contracts secured by defendants are, in the main, contracts to furnish pipe to gas and water companies, and to municipal corporations for sewerage and other purposes, which said contracts, after advertisements for bids, are let to the lowest bidders. Petitioner would  
7 show to the court that said gas and water companies and said municipal corporations, together with the public generally, being entirely ignorant of the fraudulent and unlawful manner by which defendants make their bids and secure said contracts, and having been so ignorant since said combination was entered into, and having no knowledge of such combination, have been applying in good faith to each of defendants to furnish a bid at which it would do certain work, and since said date of Dec. 28th, 1894, said defendants have been fraudulently and criminally securing about the entire

work in the territory named, and at the exhorbitant and unreasonable prices above mentioned.

## 10.

Petitioner charges upon information it believes to be true, that there are no other pipe works in the territory where the conspiracy exists between defendants, that were able to handle the large contracts for pipe, which defendants have secured since the combination existed, by reason of the want of capacity and money to carry on said work on the part of such shops not in the combination.

Petitioner further shows and charges that defendants have large sums of money, aggregating many millions of dollars, invested in the manufacture of pipe, and are able, many of them alone, to fill contracts of any size, and in fact have furnished pipe where the job amounted to over one hundred thousand dollars, and by reason of the fraudulent and unlawful manner in which they secured the contract, have divided a bonus of not less than seven dollars on each ton of pipe furnished in said large contracts, so petitioner charges that by reason of the great wealth of defendants, and the inability of any and all others engaged in manufacturing pipe in the territory above named, and by reason of the unlawful means resorted to by defendants, they have created a monopoly in the sale of cast-iron pipe in said territory and have crippled and destroyed all smaller concerns engaged in the manufacture of pipe.

## 11.

Petitioner would further show to the court, and charge that defendants, on or about the 27th day of May, 1895, to enable them to realize greater profits to themselves on the sale of their pipe, and to make the monopoly in their territory on the use and sale of the same, more complete, and to more fully effectuate the conspiracy entered into on said 28th day of December, 1894, adopted what they called the "auction pool" plan for bidding on work in the "pay territory." To carry this out, each of defendants selected one man, and the six men selected constituted an executive committee, which said committee was to be located in some central city, at present at Chicago, to whom all inquiries for pipe were to be referred. On receipt of such inquiry, this committee, in a room with no one present but themselves, secretly and fraudulently bid for the job, the one agreeing to pay the greatest amount of "bonus" of course to receive it. By this secret, and fraudulent and crinfinal manner, petitioner charges all the work done by defendants since June 1, 1895, has been secured. After this "auction pool" was over, as to each particular job, each of the defendants was notified whose representative had bid the most, and the amount of the bid, and this bid was sent by the defendant securing the job at the "auction pool" to the party wanting the pipe, the other defendants all sending in a bid for a higher price, carrying out their criminal agreement to "protect" each other, and securing the job to the highest bidder at the "auction pool," thus reversing the order of things, by giving the job to the highest, instead of the lowest bidder, the deluded customer



of course being ignorant as to the manner in which he is being swindled.

## 12.

As an example of the unequaled and unmitigated criminal conduct on the part of defendants, and the great amounts of money they have swindled the public out of, by reason of their trust and criminal conspiracy, petitioner will give one instance, among the many hundred, which it charges to be true in every particular: The municipal corporation of the city of St. Louis, Mo., wanted about 5,000 tons of cast-iron pipe during the early part of the present year of 1896. Under the "auction pool" system, as petitioner is informed and believes, and so charges, the "reserved cities," hereinbefore mentioned were left practically the same as under the fixed "bonus" system, there being a different arrangement agreed upon as to the bonus, in some way, but the pipe for the particular cities named to be supplied as originally agreed upon. Under the agreement, the pipe for the city of St. Louis was still to be furnished by

9 defendants, Hoard-Harrison Iron Company. Allowing a reasonable and fair profit, the price of the pipe wanted by St. Louis was at that time, at the shops at Bessemer, Ala., from \$13 to \$15 per ton. The freight to St. Louis from Bessemer was \$3 per ton, so that defendant, Hoard-Harrison Iron Co., could afford to sell said 5,000 tons of pipe delivered in St. Louis at from \$16 to \$18 per ton. The city of St. Louis made inquiry of defendants for the pipe, and requested them to send in bids for the work, and when said inquiries were received by defendants they were at once forwarded to the "auction pool" for the mysterious action of the executive committee aforesaid, acting for defendants. The character of the bidding at this "auction pool," and behind closed doors, is not known to petitioner, and whether the same was free, fair (?) and open, and very animated, and whether each defendant, as represented by its member of said executive committee, was taking care of itself, or whether all were bent and united on swindling the city of St. Louis to their common profit, may never be known; but one thing is certain, and petitioner so charges, defendant, Howard-Harrison Iron Company was the highest bidder at the "auction pool" and the job was knocked down to it at the price of \$24 per ton, and thereupon it sent in its bid at this price. All the other defendants sent in bids of "protection" at a higher figure. Petitioner further charges that when the bids were received by the city of St. Louis, they were opened and compared, in good faith, by a committee that represented the people of the city of St. Louis, and who were anxious to procure the pipe for this large contract at as low price as possible; and petitioner charges that said city of St. Louis was utterly ignorant as to the conspiracy between defendants and is ignorant of the fraudulent and corrupt means adopted by them, whereby all competition in bidding for the job had been destroyed, and ignorant of the complete monopoly that defendants had brought about in the territory above named, which said monopoly petitioner charges was so complete and brought about by

the means, aforesaid, as to prevent other persons and corporations from engaging in fair competition with them in the sale of said cast-iron pipe, and insured to defendants almost the exclusive right of dealing in the same, and appropriating to themselves said exclusive privilege, and restricting and restraining others in the exercise of the right that was open to them before this criminal conspiracy and unlawful and unauthorized trust was entered into between defendants. So that the contract was awarded to defendant Howard-

Harrison Iron Company at the price of \$24 per ton delivered  
10 in the city of St. Louis. Petitioner charges that a fair and reasonable price for this pipe was only \$16 to \$18 per ton at that time, and in fact defendants were selling the same at this price in "free territory," where they had competition, and where that conspiracy did not exist, on the identical date at which the sale was made to the city of St. Louis.

Petitioner shows to the court and charges that the extortion in this single contract, and the profit realized to defendants in the shape of "bonus," which was divided between them, amounted to between \$30,000 and \$40,000, and this is only one contract among the hundred which petitioner charges were secured in the same way. Petitioner charges that the pipe for this contract was shipped from Bessemer in the State of Alabama to St. Louis in the State of Missouri, and defendants are now severally engaged in shipping pipe to other States than the States in which they reside under and in pursuance of the conspiracy aforesaid.

## 13.

Petitioner charges upon information that it believes to be true, that the defendants, Howard-Harrison Iron Company, Anniston Pipe & Foundry Co., South Pittsburg pipe works, and Chattanooga foundry & pipe works, some time prior to December 28, 1894, had entered into a contract or combination in the form of a trust or conspiracy in restraint of trade and commerce between the several States, which was similar in terms to the conspiracy entered into on said 28th day of December, 1894, and the four defendants last named had been operating under the same prior to that date, but in order to make their monopoly complete the two other defendants were admitted to the trust on said 28th day of December, 1894, and the purpose of admitting them was to destroy all competition between them and insure a complete monopoly in the sale of pipe, and all of defendants herein are now operating under said trust.

## 14.

Petitioner charges that the contract, combination, trust or conspiracy aforesaid, under which defendants are now operating is in restraint of trade and commerce between and among the several States and has resulted in a monopoly to them in the manufacture and sale of cast-iron pipe in the territory named; is an unlawful  
11 combination, trust and conspiracy, and in open violation of the act of Congress of July 2, 1890, and petitioner brings this suit to restrain the violation hereinbefore set forth and



prevent defendants from continuing the sale and transportation of said cast-iron pipe from the States in which they reside into other States and for the purposes of having any of said cast-iron pipe, belonging to either of said defendants and being in course of transportation by them or either of them from one State to another, forfeited to petitioner and seized and confiscated as provided by law.

## 15.

Petitioner further charges that inasmuch as the conspiracy aforesaid was entered into in this division and district of your honor's court and defendants are all parties to the same, that the ends of justice require that they each be brought before the court in answer to this petition.

Wherefore your petitioner prays :

## I.

That it be allowed to file this petition, and upon the filing of the same, that under the fiat of your honor an injunction or restraining order be granted enjoining and restraining defendants or either of them from selling and transporting cast-iron pipe into other than the States in which they reside under any contract or agreement, entered into with citizens of such other States, by virtue of the combination, trust or conspiracy now existing between the defendants.

## II.

That each of the defendants be made parties hereto, by subpœna directed to the marshal of the district where they reside, accompanied with a copy of such injunction or restraining order as your honor may grant.

## III.

That defendants be required to answer this petition fully but not on oath, as their answers under oath are waived.

## IV.

That all cast-iron pipe sold and transported by defendants after this date, under and in pursuance of the combination, trust and conspiracy, charged in this petition, to any other State than  
12 the State in which the defendant so selling and transporting said cast-iron pipe resides, be forfeited to your petitioner, and seized and confiscated in the manner provided by law.

## V.

And upon the hearing let a decree pass dissolving the trust, combination and unlawful conspiracy now existing between defendants and perpetually enjoining them from operating under the same and from selling and transporting said cast-iron pipe into other States than in which they reside.

Petitioner prays for general relief, and states that this is the first application for extraordinary process in this cause.

JAMES H. BIBLE,  
*U. S. Attorney for the Eastern District of Tennessee.*

STATE OF TENNESSEE, {  
Hamilton County. }

James H. Bible makes oath that the facts stated in the foregoing petition as of his own knowledge, are true, and those stated on information he believes to be true, and that he brings this petition under the direction of the Hon. Judson Harmon, Attorney General of the United States.

JAMES H. BIBLE.

Sworn to and subscribed before me this 10th day of December, 1896.

[SEAL.]

F. X. RANDELL,  
*Notary Public.*

*Chancery Subpœna.*

(Endorsed :) Filed Dec. 16, 1896. Henry O. Ewing, clerk.

UNITED STATES OF AMERICA, {  
*Southern Division of the Eastern District of Tennessee,* } ss:

The President of the United States of America to the marshal of the district of Kentucky, Greeting:

You are hereby commanded to summon Dennis Long & Co., if to be found in your district, to be and appear in the circuit court of the United States for the eastern district of Tennessee, aforesaid, at Chattanooga, on the first Monday in February next, to answer  
13 a certain bill in chancery, filed and exhibited in said court against them by the United States by Judson Harmon, its Attorney General, and James H. Bible, the United States attorney for the eastern district of Tennessee.

Hereof you are not to fail under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of Dec., A. D. 1896, and the 121st year of the Independence of the United States of America.

Attest:

[SEAL.]

HENRY O. EWING, *Clerk.*

*Memorandum.*

The said defendants are required to enter their appearance in this suit in the clerk's office of said court, on or before the first Monday in Feb'y, 1897, otherwise the bill may be taken *pro confesso*.

HENRY O. EWING, *Clerk.*

No. 539. Circuit court of the United States, southern division of the eastern district of Tennessee. United States, etc., vs. The Addyston Pipe & Steel Co. *et al.* Issued Dec. 10, 1896. Henry O. Ewing, clerk, Louisville, Ky.

(Return.)

Executed on Dennis Long & Co., by delivering a copy of the within to Geo. J. Long, president, he being the highest officer found, and by making known to the def't the contents of restraining order, at Louisville, this Dec. 12, 1896.

JAMES BLACKBURN,  
U. S. Marshal,  
By L. J. DUDLEY,  
Dep. U. S. Marshal.

*Chancery Subpoena.*

(Endorsed :) Filed Dec. 15, 1896. Henry O. Ewing, clerk.

UNITED STATES OF AMERICA. }  
*Southern Division of the Eastern District of Tennessee,* } ss :

The President of the United States of America to the marshal of the southern district of Ohio, Greeting :

You are hereby commanded to summon the Addyston Pipe & Steel Company, if to be found in your district, to be and appear in the circuit court of the United States for the eastern district of Tennessee, aforesaid, at Chattanooga, on the first Monday in February next, to answer a certain bill in chancery, filed and exhibited  
14 in said court against it by the United States by Judson Harmon, its Attorney General, and James H. Bible, the United States attorney for the eastern district of Tennessee.

Hereof you are not to fail under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of Dec., A. D. 1896, and the 121st year of the Independence of the United States of America.

[SEAL.]

HENRY O. EWING, *Clerk.*

*Memorandum.*

The said defendant is required to enter its appearance in this suit in the clerk's office of said court on or before the first Monday of Feb'y, 1897, otherwise the said bill may be taken *pro confesso*.

HENRY O. EWING, *Clerk.*

No. 539. Circuit court United States, southern division of the eastern district of Tennessee. United States, etc., vs. The Addyston Pipe & Steel Co. *et al.* Issued Dec. 10, A. D. 1896. Henry O. Ewing, clerk, Cincinnati, O.

(Return.)

Received this writ on the 11th day of Dec., 1896, and on the same day I served same by handing a true copy thereof with the endorsement thereon to B. F. Haughton, vice-president of the within-named Addyston Pipe & Steel Company.

MICHAEL DEVANNEY,

U. S. Marshal,

Per JOHN H. DEVANNEY, Deputy.

*Chancery Subpoena.*

(Endorsed :) Filed Jan. 9, 1897. Henry O. Ewing, clerk.

UNITED STATES OF AMERICA,  
Southern Division of the Eastern District of Tennessee, } ss :

The President of the United States of America to the marshal of the northern district of Alabama, Greeting :

You are hereby commanded to summon Howard-Harrison Iron Company (Bessemer, Ala.)—Anniston Pipe & Foundry Company (Anniston), if to be found in your district, to be and appear in the circuit court of the United States for the eastern district of Tennessee, aforesaid, at Chattanooga, on the first Monday in February next, to answer a certain bill in chancery, filed and exhibited  
15 in said court against them by the United States by Judson Harmon, its Attorney General, and James H. Bible, the United States attorney for the eastern district of Tennessee.

Hereof you are not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of Dec., A. D. 1896, and the 121st year of the Independence of the United States of America.

Attest:

[SEAL.]

HENRY O. EWING, Clerk.

*Memorandum.*

The said defendants are required to enter their appearance in the clerk's office of said court on or before the first Monday of February, 1897, otherwise the said bill may be taken *pro confesso*.

HENRY O. EWING, Clerk.

No. 539. Circuit court of the United States, southern division of the eastern district of Tennessee. The United States vs. The Addyston Pipe & Steel Co. et al. Issued Dec. 10, 1897. Henry O. Ewing, clerk. Birmingham, Ala.

(Return.)

Executed on the 4th day of Jan., 1897, by leaving a copy of the within subpoena with John Thompson, superintendent of Howard-Harrison pipe works, at Bessemer, Ala.

J. C. MUSGROVE,

U. S. Marshal,

By L. C. HUDGINS, Deputy.

Executed by leaving a copy of the within notice with Louis Miller, secretary and treasurer of the Anniston Pipe & Foundry Co. This the 6th day of Jan., 1897.

J. C. MUSGROVE, U. S. M.,  
By A. J. SULLIVAN.

*Chancery Subpœna.*

(Endorsed:) Filed Dec. 17, 1896. Henry O. Ewing, clerk.

UNITED STATES OF AMERICA, } ss:  
*Southern Division of the Eastern District of Tennessee,*

The President of the United States of America to the marshal of the eastern district of Tennessee, Greeting:

You are hereby commanded to summon South Pittsburg  
16 Pipe Works, Chattanooga Foundry & Pipe Works, if to be found in your district to be and appear in the circuit court of the United States for the eastern district of Tennessee, aforesaid, at Chattanooga, on the first Monday of February next, to answer a certain bill in chancery filed and exhibited in said court against them by the United States by Judson Harmon, its Attorney General, and James H. Bible, the United States attorney for the eastern district of Tennessee.

Hereof you are not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States this 10th day of Dec., A. D. 1896, and the 121st year of the Independence of the United States of America.

Attest:

[SEAL.]

HENRY O. EWING, *Clerk.*

*Memorandum.*

The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of February, 1897, otherwise the said bill may be taken *pro confesso*.

HENRY O. EWING, *Clerk.*

No. 539. Circuit court of the United States, southern division of the eastern district of Tennessee. The United States, etc., vs. The Addyston Pipe and Steel Co. Issued December 10, A. D. 1896. Henry O. Ewing, clerk. Hamilton & Marion county.

(Return.)

Came to hand same day issued and executed as commanded by leaving a copy of this writ with D. Giles, president Chattanooga foundry and pipe works, this December 11, 1896.

JNO. T. ROGERS,  
*Dep. U. S. M.*

Came to hand December 14, 1896, and executed as commanded by leaving a copy of this writ with C. W. Harrison, vice-president of the South Pittsburg pipe works.

This December 14, 1896.

J. M. ANDERSON,  
U. S. Deputy Marshal.

Journal "E," page 553, Dec. 10, 1896.

THE UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL CO. ET AL. }

In this cause the court is pleased to order that the petition  
17 be filed, and that subpoena to answer be issued to each of defendants, returnable to rule day in February, to be served upon each of the said defendants by the United States marshals of the respective districts in which they reside. The clerk of this court will make certified copies of the bill in this cause, one for each defendant, to be sent to the said defendants by mail.

*Restraining Order.*

(Endorsed:) Filed Dec. 15, 1896. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

THE UNITED STATES, by JUDSON HARMON, Its Attorney General,  
and James H. Bible, the United States Attorney for the Eastern  
District of Tennessee, }

*against*

THE ADDYSTON PIPE & STEEL CO. *et al.* }

Whereas, in the above cause a motion for the issuance of a preliminary writ on injunction has been duly filed, the hearing thereof being fixed for the 19th day of December, 1896, at 10 o'clock in the forenoon, at the Federal court-room in the city of Chattanooga, Tennessee; and it having been made to appear that there is danger of irreparable injury being caused to the complainant before the hearing of said application for the writ of injunction unless the said defendants are, pending such hearing, restrained as herein set forth, therefore complainant's application for such restraining order is granted.

Now, therefore, take notice that you, The Addyston Pipe & Steel Company, and Dennis Long & Company, Howard-Harrison Iron Company, and Anniston Pipe & Foundry Company, and South Pittsburg Pipe Works, and Chattanooga Foundry & Pipe Works, defendants herein, your agents, servants and attorneys, and each of you, are hereby especially restrained and enjoined from further maintaining or executing, directly or indirectly, the unlawful combination, trust and conspiracy, as alleged in the bill, and from doing



any acts or things in aid or promotion of said combination, trust and conspiracy, for the particulars of which reference is made to the bill at large, and from shipping goods under contract from one State to another in furtherance of said trust and combination, until the hearing upon said application for a writ of injunction and the further order of the court in the premises.

18 Provided, however, that until the hearing of said application any of the defendants having on hand goods ready for shipment pursuant to any contract, and desiring to ship the same, may do so by first executing bond before the clerk of this court in such sum as will cover the value of said goods so to be shipped, said value to be fixed by the clerk, and said bond conditioned to account for or pay into the registry of this court the value of any such goods so shipped, if it shall be held on the final hearing that such goods were subject to seizure and confiscation by the United States under the terms of the act of Congress under which this suit is brought.

Done at chambers in the city of Chattanooga, Tennessee, this 10th day of December, 1896.

C. D. CLARK,  
*District Judge.*

(Return.)

Received a writ of which this is a copy on the 11th of Dec., and on the same day I served the same by handing it to B. F. Haughton, vice-president of the within-named Addyston Pipe & Steel Company, at Cincinnati, Ohio.

MICHAEL DEVANNEY,  
*U. S. Marshal,*  
Per JOHN W. DEVANNEY, *Dep.*

*Restraining Order.*

(Endorsed :) Filed Dec. 16, 1896. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

THE UNITED STATES, by JUDSON HARMON, Its Attorney General,  
and James H. Bible, the United States Attorney for the Eastern  
District of Tennessee, }

*against*  
THE ADDYSTON PIPE & STEEL COMPANY and Others. }

Whereas, in the above cause a motion for the issuance of a preliminary writ of injunction has been duly filed, the hearing thereof being fixed for the 19th day of December, 1896, at 10 o'clock in the forenoon, at the Federal court-room in the city of Chattanooga, Tennessee; and it having been made to appear that there is danger of irreparable injury being caused to complainant before the hearing of said application for the writ of injunction, unless the said defendants are, pending such hearing, restrained as herein set forth, therefore complainant's application for such restraining order is granted.



19 Now, therefore, take notice that you, The Addyston Pipe and Steel Company, and Dennis Long & Company; Howard-Harrison Iron Company, and Anniston Pipe & Foundry Company, and South Pittsburg Pipe Works, and Chattanooga Foundry & Pipe Works, defendants herein, your agents, servants and attorneys, and each of you, are hereby specially restrained and enjoined from further maintaining or executing, directly or indirectly, the unlawful combination, trust and conspiracy as alleged in the bill, and from doing any acts or things in aid or promotion of said combination, trust and conspiracy, for the particulars of which reference is made to the bill at large, and from shipping goods under contract from one State to another in furtherance of said trust and combination, until the hearing upon said application for a writ of injunction and the further order of the court in the premises.

Provided, however, that until the hearing of said application any of the defendants having on hand goods ready for shipment pursuant to any contract, and desiring to ship the same, may do so by first executing bond before the clerk of this court in such sum as will cover the value of said goods so to be shipped, said value to be fixed by the clerk, and said bonds conditioned to account for and pay into the registry of this court the value of any such goods so shipped, if it shall be held on the final hearing that such goods were subject to seizure and confiscation by the United States under the terms of the act of Congress under which this suit is brought.

Done at Chambers, in the city of Chattanooga, Tennessee, this 10th day of December, 1896.

C. D. CLARK,  
*District Judge.*

(Return.)

Executed this order by making known the contents hereof to Geo. J. Long, president of Dennis Long & Co., Louisville, Dec. 12, 1896.

JAMES BLACKBURN,  
*U. S. Marshal,*

By L. J. DUDLEY,  
*Deputy Marshal.*

20

*Restraining Order.*

(Endorsed :) Filed Dec. 17, 1896. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division  
of the Eastern District of Tennessee.

THE UNITED STATES, by JUDSON HARMON, Its Attorney General,  
and James H. Bible, the United States Attorney for the Eastern  
District of Tennessee,

*against*

THE ADDYSTON PIPE & STEEL COMPANY and Others.

Whereas, in the above cause a motion for the issuance of a preliminary writ of injunction has been duly filed, the hearing thereof

being fixed for the 19th day of December, 1896, at 10 o'clock in the forenoon, at the Federal court-room in the city of Chattanooga, Tennessee; and it having been made to appear that there is danger of irreparable injury being caused to complainant, before the hearing of said application for the writ of injunction, unless said defendants are, pending such hearing, restrained as herein set forth, therefore complainant's application for such restraining order is granted.

Now, therefore, take notice that you, The Addyston Pipe and Steel Company, and Dennis Long & Company; Howard-Harrison Iron Company, and Anniston Pipe & Foundry Company, and South Pittsburg Pipe Works, and Chattanooga Foundry & Pipe Works, defendants herein, your agents, servants and attorneys, and each of you, are hereby specially restrained and enjoined from further maintaining or executing, directly or indirectly, the unlawful combination, trust and conspiracy, as alleged in the bill, and from doing any acts or things in aid or promotion of said combination, trust and conspiracy, for the particulars of which reference is made to the bill at large, and from shipping goods under contract from one State to another in furtherance of said trust and combination, until the hearing upon said application for a writ of injunction and the further order of the court in the premises.

Provided, however, that until the hearing of said application any of the defendants having on hand goods ready for shipment pursuant to any contract, and desiring to ship the same, may do so by first executing bond before the clerk of this court in such sum as will cover the value of said goods so to be shipped, said value to be fixed by the clerk, and said bond conditioned to account for and pay into the registry of this court the value of any such goods so shipped, if it shall be held on the final hearing that such goods were subject to seizure and confiscation by the United States under the terms of the act of Congress under which this suit is brought.

Done at chambers in the city of Chattanooga, Tennessee, this 10th day of December, 1896.

C. D. CLARK.

(Return.)

Came to hand same day issued and executed as commanded by reading and making known the contents of this writ to D. Giles, pres't Chattanooga foundry & pipe works, this Dec. 11, 1896.

JNO. T. ROGERS,  
Deputy U. S. M.

Came to hand Dec. 14th and executed as commanded by reading and making known the contents of this writ to C. W. Harrison, vice-president of the South Pittsburg pipe works. This Dec. 14, 1896.

J. M. ANDERSON,  
Deputy U. S. M.

*Restraining Order.*

(Endorsed :) Filed Jan. 9, 1897. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division  
of the Eastern District of Tennessee.

THE UNITED STATES, by JUDSON HARMON, Its Attorney General,  
and James H. Bible, the United States Attorney for the Eastern  
District of Tennessee,

*against*

THE ADDYSTON PIPE & STEEL COMPANY and Others.

Whereas, in the above cause a motion for the issuance of a preliminary writ of injunction has been duly filed, the hearing thereof being fixed for the 19th day of December, 1896, at 10 o'clock in the forenoon at the Federal court room in the city of Chattanooga, Tennessee; and it having been made to appear that there is danger of irreparable injury being caused to complainant, before the hearing of said application for the writ of injunction, unless the said defendants are, pending such hearing, restrained as herein set forth, therefore complainant's application for such restraining order is granted.

Now, therefore, take notice that you, The Addyston Pipe and Steel Company, and Dennis Long & Company, Howard-Harrison Iron Company, and Anniston Pipe & Foundry Company, and South Pittsburg Pipe Works, and Chattanooga Foundry & Pipe Works, defendants herein, your agents, servants and attorneys, and each of

22 you are hereby specially restrained and enjoined from further maintaining or executing, directly or indirectly the unlawful combination, trust and conspiracy as alleged in the bill, and from doing any acts or things in aid or promotion of said combination, trust and conspiracy, for the particulars of which reference is made to the bill at large, and from shipping goods under contract from one State to another in furtherance of said trust and combination, until the hearing upon said application for a writ of injunction and the further order of the court in the premises.

Provided, however, that until the hearing of said application any of the defendants having on hand goods ready for shipment pursuant to any contract, and desiring to ship the same, may do so by first executing bond before the clerk of this court in such sum as will cover the value of said goods so to be shipped, said value to be fixed by the clerk, and said bond conditioned to account for and pay into the registry of this court the value of any such goods so shipped, if it shall be held on the final hearing that such goods were subject to seizure and confiscation by the United States under the terms of the act of Congress under which this suit is brought.

Done at chambers in the city of Chattanooga, Tennessee, this 10th day of December, 1896.

C. D. CLARK,  
District Judge.

*(Return.)*

Executed on the 4th day of Jan., 1897, by reading the within writ of restrain- to John Thompson, superintendent of Howard-Harrison pipe works, at Bessemer, Ala.

J. C. MUSGROVE,

*U. S. Marshal,*

By L. S. HUDGINS, *Deputy.*

Executed by reading the within process to Louis Miller, secretary and treasurer of the Anniston Pipe & Foundry Co., this the 6th day of Jan., 1897.

J. C. MUSGROVE, *U. S. M.,*

By A. J. SULLIVAN.

*Notice.*

(Endorsed:) Filed December 18, 1896. Crawford T. Johnson, deputy clerk.

UNITED STATES

*vs.*

ADDYSTON PIPE & STEEL CO. ET AL. }

The defendants in the above-entitled cause are notified to file with the clerk of this court, on or before January 10, 1897, all books, records and papers, now in the possession of either of them, 23 pertaining to their operations as the Associated pipe works.

They are required to file the minutes of the various meetings held between them at the following times and places: Chattanooga, Tenn., Dec. 28, 1894; also by-laws adopted by them at a meeting held January 23, 1895, at Chattanooga, Tenn.; also minutes of meetings held between them at Anniston, Ala., Feb'y 21, 1895; Cincinnati, Ohio, March 21, 1895; Louisville, Ky., May 16, 1895; Louisville, Ky., May 27, 1895; Cincinnati, Ohio, June 17, 1895; Cincinnati, Ohio, July 18, 1895; Cincinnati, Ohio, August 30, 1895; Louisville, Ky., Sept. 19, 1895; Atlanta, Ga., October 17, 1895; Birmingham, Ala., Nov. 21, 1895; Lookout Mountain, Tenn., Dec. 19 and 20, 1895; Cincinnati, Ohio, January 10, 1896; Cincinnati, Ohio, January 27, 1896; Cincinnati, Ohio, February 14, 1896. Also letter dated at Chattanooga, Tenn., Feb'y 26, 1896, addressed to J. K. Dimmick, vice-president, Anniston, Ala., and signed "Chattanooga foundry & pipe works, by E. B. Thomasson." Also letter dated at Chattanooga, Tenn., Feb'y 15, 1896, addressed to J. K. Dimmick, V. P., Anniston, Ala., and signed "Chattanooga foundry & pipe works, by E. B. Thomasson." Also letter (or copy of same) written by Chattanooga foundry & pipe works, by E. B. Thomasson, to Mr. Park Woodard, supt. Atlanta water works, dated at Chattanooga, Tenn., Feb'y 21, 1896; also letter dated Chattanooga, Tenn., Feb'y 21, 1896, addressed to Anniston Pipe & Foundry Co., Anniston, Ala., and signed Chattanooga foundry & pipe works, by M. Llewellyn, secretary; also telegrams sent by Anniston Pipe & Foundry Co., to Chattanooga foundry & pipe

works, Chattanooga, Tenn., dated Anniston, Ala., Feb'y 21, 1896. Also letter written by R. L. Varner to Anniston Pipe & Foundry Co., dated Anniston, Ala., Feb'y 24, 1896, and signed by R. L. Varner. Also letter dated Anniston, Ala., signed J. K. Dimmick, V. P. and addressed to, and one sent to each, Chattanooga foundry & pipe works, South Pittsburg pipe works and Hoard-Harrison Iron Co. Also letter dated Anniston, Ala., Feb'y 24, 1896, addressed to B. F. Nichols, V. P., and signed "V. P." Also letter dated Bessemer, Ala., January 24, 1896, addressed to each of above defendants and to John W. Harrison, president, and J. M. Dudley, signed by F. B. Nichols, V. P. Also letter dated Feb'y 20, 1896, addressed to Mr. John W. Harrison, president, Howard-Harrison Iron Co., Bessemer, Ala., signed M. Llewellyn. Also letters of date respectively February 13, 1896; March 17, 1896; March 30, 1896; April 30, 1896; April 15, 1896; all addressed to Hoard-Harrison Iron Co., Bessemer, Ala., and signed "Chattanooga foundry & pipe works, by M.

24 Llewellyn, secretary." Also general statement of debits and credits prepared by auditor of Associated pipe works, showing remittances and receipts of money to and by defendant in adjusting bonuses and dated as follows: General statements, January 1 to 15, 1896; January 16 to 31, 1896; February 1 to 15, 1896; February 16 to 29, 1896; March 1 to 15, 1896; March 16 to 31, 1896; April 1 to 15, 1896.

Also general statements prepared before and since the above dates, showing receipts and remittances of money from one to the other of defendants. Also letters (or copies of same) dated respectively as follows: Chattanooga, Tenn., January 31st, 1896; April 4th, 1896, and May 1, 1896, all signed, M. Llewellyn, chairman, and addressed to Mr. J. W. Thornton, auditor. Also letter written each of defendants, dated Chattanooga, Tenn., January 31, 1896, and signed M. Llewellyn, chairman. Also letter dated Cincinnati, Ohio, Dec. 28, 1895, addressed to M. Llewellyn, chairman, Chattanooga, Tenn., and signed B. F. Haughton, V. P. Also letters (or copies of same), as follows: One dated Chattanooga, Tenn., April 18, 1896, addressed to C. M. Finkle, chairman water committee, Wytheville, Va., signed "Chattanooga foundry & pipe works, by E. B. Thomasson;" also telegram dated Chattanooga, Tenn., April 10, 1896, addressed to E. B. Thomasson, Chicago, signed M. Llewellyn, chairman. Also letter dated Chattanooga, Tenn., Feb'y 1, 1896, addressed to Mr. R. A. Cairns, C. E., Waterbury, Conn., signed "Chattanooga foundry & pipe works, by E. B. Thomasson." Also telegram dated Chattanooga, Tenn., March 27, 1896, addressed to Lester E. Wood, agent, 100 Broadway, N. Y., signed M. Llewellyn. Also telegram dated Chattanooga, Tenn., April 29, 1896, addressed to Solvay Process Co., Syracuse, N. Y., signed Chattanooga foundry & pipe works. Also letter, or copy of same, dated Chattanooga, Tenn., April 27, 1896, addressed to Messrs. Thomas Carlin's Sons, Allegheny, Pa., and signed "Chattanooga foundry & pipe works, by E. B. Thomason." Also telegram dated Chattanooga, Tenn., April 21, 1896, addressed to L. E. Wood, agent, 100 Broadway, New York city, and signed Chattanooga foundry & pipe works. Also telegram dated Chatta-

nooga, Tenn., April 15, 1896, addressed to L. E. Wood, agent, 100 Broadway, N. Y., and signed Chattanooga foundry & pipe works. Also telegram dated Chattanooga, April 14, 1896, addressed to Lester E. Wood, agent, 100 Broadway, N. Y., and signed Chattanooga foundry & pipe works. Also statement showing amount of cast-iron pipe sold and shipped by Howard-Harrison Iron Co. to the city of St. Louis, and price received for same since Dec. 28, 1894. Also minutes of meeting held at Chicago, Ill., March 13, 1896. Also minutes of meeting at same place April 10, 1896. Also letter dated Cincinnati, Ohio, January 2, 1895, addressed to M. Llewellyn, chairman, Chattanooga, Tenn., and signed B. F. Houghton, V. P. Also letter dated Chattanooga, Tenn., January 1, 1895, addressed to each of defendants and signed M. Llewellyn, acting chairman.

You will produce all books, papers and records of every kind and character belonging to and connected with the Associated pipe works, in addition to what is here set out.

JAMES H. BIBLE, *U. S. Att'y.*

(Endorsed :) I acknowledge service of the within notice, also receipt of copy of same and waive service by an officer. This Dec. 18, 1896. Brown & Spurlock, att'ys for def'ts.

Journal "E," page 559, December 19, 1896.

UNITED STATES  
vs.  
THE ADDYSTON PIPE & STEEL CO. }

The hearing in this cause on motion for injunction is hereby continued and set for the 25th day of January, 1897, the restraining order heretofore granted being continued in force to said date.

*Notice Filed by Complainant.*

(Endorsed :) Filed Dec. 18, 1896. Henry O. Ewing, clerk.

In the Circuit Court at Chattanooga, Tennessee.

UNITED STATES  
vs.  
ADDYSTON PIPE & STEEL CO. ET AL. }

To each of defendants in above cause :

You are hereby notified to produce before Hon. C. D. Clark, judge, etc., at Chattanooga, Tennessee, on Saturday, the 19th inst.,  
26 to be used as evidence in the application for injunction in the above-entitled cause, the following documents: You are each notified to produce copies of the minutes of all meetings held between you since Dec. 28, 1894, also originals or copies of all letters and telegrams of every kind and character between you since said 28th day of December, 1894, or between your officers and agents, that have any relation whatever or in any way spring out of the agreement entered into on said date or prompted by any agreement



entered into at that time, or in carrying out any of the terms of said agreement; and especially are you notified to produce the following: Letter dated January 2, 1896, at Chattanooga, Tenn., addressed to Mr. W. H. Flint, Cincinnati, Ohio, and signed by defendant, Chattanooga Foundry & Pipe Works, by E. B. Thomasson. (Copy of this letter is now in possession of the defendant, Chattanooga Foundry & Pipe Works.) This defendant will also produce all shorthand note books used by J. E. McClure while in its employ. Also copy of the minutes of the meeting between defendants or their representatives held in Chattanooga, Tenn., on Dec. 28, 1894; also copies of all letters and telegrams between defendants as to defendants, The Addyston Pipe & Steel Company, and Dennis Long & Co., entering into the combination; also copies of letters and telegrams signed by M. Llewellyn to each of defendants, notifying them of last-named defendants agreeing to the terms of the combination. Also copy of minutes of meeting between defendants held by them in Bates block, Chattanooga, Tenn., January 23, 1895, including by-laws adopted at this meeting. Also furnish copies of minutes of all meetings held between defendants after above date, giving the date and place of said meetings, including copy of minutes of meeting between defendants of May 16, 1895, held at Louisville, Ky.; also full copy of minutes of meeting between defendants, held at Lookout inn, Lookout mountain Tennessee, Dec. 19 and 20, 1895; also copy of the letter dated Cincinnati, Ohio, Dec. 28, 1895, and addressed to M. Llewellyn, chairman, Chattanooga, Tenn., and signed by B. F. Haughton, V. P.; also copy of minutes of meeting at Cincinnati, Ohio, Feb'y 14, 1895, between defendants; also produce copies of general statements from Auditor J. W. Thornton, which shows how settlements were made between defendants of "bonuses" realized; also letters from different defendants showing where money has been both received and sent according to auditor's statement; also letters signed "M. Llewellyn, chm." to each of defendants, notifying them that drafts have been made on them

27 for their *pro rata* of expenses for various months, as per auditor's report, in maintaining the combination; also letters from M. Llewellyn, addressed to the auditor, acknowledging his statement of expenses for various months and enclosing exchange for the amount; also a paper in the handwriting of the auditor on Lookout Inn letter-head, giving caption for use in transcribing meeting held on Dec. 19th and 20th, 1895, at Lookout inn; also all letters and telegrams written by M. Llewellyn, chm., to the several defendants in reference to the business of the trust; also all letters, telegrams and circulars, giving prices and quotations of cast-iron pipe of different sizes in "free territory," where the combination did not exist, that were sent out by defendants, or either of them; also card of prices, dated Aug. 15, '95; also copy of letter dated Chattanooga, Tenn., Feb'y 25, 1896, addressed to J. K. Dimmick, V. P., and all concerned, and signed, "Chattanooga foundry & pipe works, by E. B. Thomasson," which said letter was dictated and signed by Thomasson, and written and mailed by J. E. McClure.

JAMES H. BIBLE, U. S. At'y.



(Return.)

Executed by delivering a copy of this notice to D. Giles, president of the Chattanooga foundry & pipe works, this Dec. 18, 1896.

JNO. T. ROGERS,  
Dept. U. S. M.

Notice.

(Endorsed :) Filed Dec. 21, 1896. Henry O. Ewing, clerk.

In the Circuit Court at Chattanooga, Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE &amp; STEEL CO. ET AL. }

To each of defendants in above cause:

You are hereby notified to produce before Hon. C. D. Clark, judge, etc., at Chattanooga, Tennessee, on Saturday the 19th inst., to be used as evidence in the application for injunction in the above-entitled cause, the following documents: You are each notified to produce copies of the minutes of all meetings held between you since Dec. 28, 1894, also originals or copies of all letters and 28 telegrams of every kind and character between you since said 28th day of December, 1894, or between your officers and agents that have any relation whatever or in any way spring out of the agreement entered into on said date or prompted by any agreement entered into at that time, or in carrying out any of the terms of said agreement, and especially are you notified to produce the following: Letter dated January 2, 1896, at Chattanooga, Tenn., addressed to Mr. W. H. Flint, Cincinnati, Ohio, and signed by defendant, Chattanooga Foundry & Pipe Works, by E. B. Thomasson. (Copy of this letter is now in possession of the defendant, Chattanooga Foundry & Pipe Works.) This defendant will also produce all shorthand note books used by J. E. McClure while in its employ. Also copy of the minutes of the meeting between defendants or their representatives held in Chattanooga, Tenn., on Dec. 25, 1894; also copies of all letters and telegrams between defendants as to defendants The Addyston Pipe & Steel Co., and Dennis Long & Co., entering into the combination; also copies of letters and telegrams signed by M. Llewellyn to each of defendants, notifying them of last-named defendants agreeing to the terms of the combination. Also copy of minutes of meeting between defendants held by them in Bates block, Chattanooga, Tenn., January 23, 1895, including by-laws adopted at this meeting. Also furnish copies of minutes of all meetings held between defendants after above date, giving the date and place of said meetings, including copy of minutes of meeting between defendants of May 16, 1895, held at Louisville, Ky., also full copy of minutes of meeting between defendants, held at Lookout inn, Lookout mountain, Tennessee, Dec. 19 and 20, 1895; also copy of letter dated Cincinnati, O., Dec. 28, 1895, and addressed to M.

Llewellyn, chairman, Chattanooga, Tenn., and signed by B. F. Haughton, V. P.; also copy of minutes of meeting at Cincinnati, O., Feb'y 14, 1895, between defendants; also produce copies of general statement from Auditor J. W. Thornton, which shows how settlements were made between defendants of "bonuses" realized; also letters from different defendants showing where money has been both received and sent according to auditor's statement; also letters signed "M. Llewellyn, chm.," to each of the defendants, notifying them that drafts have been made on them for their *pro rata* of expenses for various months, as per auditor's report, in maintaining the combination; also letters from M. Llewellyn, addressed to the auditor, acknowledging his statements of expenses for various months and enclosing exchange for the amount; also a paper in the handwriting of the auditor on

29 Lookout Inn letter-head, giving caption for use in transcribing meeting held on Dec. 19 and 20, 1895, at Lookout inn.

Also all letters and telegrams written by M. Llewellyn, chm., to the several defendants in reference to the business of the trust; also all letters, telegrams and circulars, giving prices and quotations of cast-iron pipe of different sizes in "free territory" where the combination did not exist, that were sent out by defendants or either of them; also card of prices, dated Aug. 15, '95; also copy of letter dated Chattanooga, Tenn., Feb'y 25, 1896, addressed to J. K. Dimmick, V. P., and all concerned, and signed "Chattanooga foundry & pipe works, by E. B. Thomasson," which said letter was dictated and signed by Thomasson, and written and mailed by J. E. McClure.

JAMES H. BIBLE, *U. S. At'y.*

(Return.)

Executed by leaving a copy with Louis Haster, secretary of Howard-Harrison Pipe Co., this the 18th day of Dec., 1896.

J. C. MUSGROVE, *U. S. M.*,

By A. J. SULLIVAN.

*Notice Filed by Complainant.*

(Endorsed :) Filed Jan. 15, 1897. Henry O. Ewing, clerk.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

*Notice.*

The defendants are hereby notified to produce before the court at the hearing of application for injunction at the court-room in the custom-house at Chattanooga, Tennessee, on the 25th day of January, 1897, the following correspondence: Letter dated South Pittsburg, Tennessee, April 13, 1896, addressed to J. G. Miller, Chicago, Ill., signed South Pittsburg pipe works; letter dated Chattanooga,

Tenn., April 15, 1896, addressed to W. H. Flint, 401 Temple court, Chicago, Ill., signed Chattanooga foundry & pipe works, by E. B. Thomasson; letter dated Chattanooga, Tenn., April 28, 1896, addressed to South Pittsburg pipe works, South Pittsburg, Tenn.,

30 signed by Chattanooga foundry & pipe works, by E. B. Thomasson; letter dated South Pittsburg, Tenn., April 29, 1896, addressed to Chattanooga foundry & pipe works, Chattanooga, Tenn., signed C. W. Harrison, vice-president; letter dated Chattanooga, Tenn., April 29, 1896, addressed to Mr. Elias L. Birbower, rec'v'rs, American Water Works Co., Omaha, Neb., signed Chattanooga foundry & pipe works, by E. B. Thomasson.

Petitioner desires that the letters above mentioned together with the letters and documents of various descriptions that defendants have heretofore been notified to produce, by two former notices, be filed in this cause on or before said 25th day of January, 1897, so that petitioner may read them on the hearing of its application for injunction. This Jan'y 14, 1897.

JAMES H. BIBLE, *U. S. At'y.*

(Endorsed :) We acknowledge service of this notice and a copy of the same is left with us Jan 15, '97. Brown & Spurlock.

*Demurrer and Answer of Defendants.*

(Endorsed :) Filed 22<sup>nd</sup> day of Jan., 1897. Henry O. Ewing, clerk.  
In the Circuit Court of the United States for the Southern Division  
of the Eastern District of Tennessee.

UNITED STATES

*vs.*

ADDYSTON PIPE & STEEL CO. ET AL.

The joint and separate demurrer of The Addyston Pipe & Steel Company, Dennis Long & Company, Howard-Harrison Iron Company, Anniston Pipe & Foundry Company, South Pittsburg Pipe Works, and Chattanooga Foundry & Pipe Works to part, and the joint and several answer of the same defendants to the residue, off the original petition filed against them in the above styled cause.

The said defendants by protestation, not confessing or acknowledging all or any of the matters and things in the said bill contained to be true in such manner and form as the same are therein set forth and alleged, do demur thereto as follows:

I.

In so far as the petition seeks to enjoin the transportation of goods from one State to another by the alleged combination

31 (1), because no such relief is specified in the act requiring petition to be filed, and is contrary to the spirit and purpose of said act, and (2) because different and independent proceedings are directed in so far as it was intended to affect or prevent such transportation of goods.

## II.

In so far as it sought to seize or affect a forfeiture of goods in this cause, because by the terms of the act such seizure and forfeiture is required to be had by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

## III.

In so far as said petition states or alleges an offense by reason of agreement dated December 28th, 1894, because the petition shows on its face that said agreement if made as alleged, has not been in force since May 27th, 1895.

## IV.

They demur to said petition in so far as it undertakes to allege the illegal agreement between defendants, (1st), because no specified offense as defined by the act of Congress is anywhere charged in said petition, and (2nd) because it does not appear from the terms of said contract or combination as alleged that it undertook directly to restrain trade or monopolize trade and commerce among the several States.

## V.

To paragraphs 7 and 12 of said petition, because the said petition is only authorized to restrain violations under the act under which it is filed, and not to review, correct or punish acts which have taken place. The allegations are therefore immaterial to the relief sought.

## VI.

To paragraph- 8 and 9 of said petition, (1) because the contract or combination therein was only in partial restraint of trade, and it is not shown that the contract or combination was in terms or in effect in restraint or a monopoly of trade and commerce among the several States, nor is it alleged that such was the contract or  
32 combination (2) because the bill shows on its face that the contract or combination of which the facts stated in these paragraphs formed a part, was superseded by and abandoned after the alleged contract of May 27th, 1895.

Wherefore, and for divers other good reasons of demurrer appearing in said bill, the said defendants crave the judgment of this honorable court whether they shall be compelled to make any answer to such parts of the bill as hereinbefore demurred to.

As to the residue of said bill these defendants, saving to themselves all manner of benefit or advantage of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said petition, and not waiving but reserving to themselves especially the benefit of their demurrer, for answer to so much of said petition as they are advised it is material and necessary for them to make answer to, would respectfully show unto the court:

## 1.

It is true that defendants are and have been for a number of years engaged in the manufacture of cast-iron pipe, a commodity made for special purposes. It may be produced in unlimited quantities, and is sold only to or for other corporations, and generally under contracts requiring it to be manufactured, tested and delivered according to specifications in each case, so that sales thereof differ from simple contracts for the sale of ordinary articles of commerce. They therefore deny that cast-iron pipe is a commodity in general use but aver that it is used only by and for certain other corporations which contract for its manufacture and delivery in a special manner as will be hereinafter stated.

## 2.

They are advised it is immaterial in the present cause that they may be favorably situated for the purposes of their business, and deny that they have incurred any liability on account of their location different from that which would apply to similar companies elsewhere; they also deny that the statements contained in the second paragraph of said petition are true. On the contrary they aver that there are other manufacturers more favorably situated than defendants for manufacturing and selling such pipe, and which also have better freight rates to a large part of that territory in which defendants are alleged to have created a monopoly.

## 33

## 3.

They deny that they are the only persons engaged in the manufacture of cast-iron pipe in the territory embracing the 36 States and Territories enumerated in paragraph 3 of said petition or that they are the only persons so engaged who have the capacity to supply the demand and fulfill the contracts in said territory. On the contrary, they aver that there are nine other factories engaged in the manufacture of cast-iron pipe in the same territory, and having a daily capacity of about 835 tons, which is considerably in excess of the aggregate daily capacity of all these respondents. There are besides ten or more other pipe works located in other States of the Union, having a daily capacity of 1,550 tons, which may sell pipe in any part of the United States, different ones of said companies located outside of the States enumerated, with greater capacity than that of defendants combined, do compete for work and sales within said States, and on account of their location on or proximity to the seacoast of the Eastern States, have shipping rates to portions of said territory more favorable than can be obtained by any of the defendants. A list of such factories is hereto attached as Exhibit "A" to this answer.

It is untrue, as might have been discovered on the least inquiry, there was only a few other pipe works located in the specified territory, which were unable to compete with the defendants for want of capacity, and it is also untrue that they are unable to compete

and have been driven out of the market by reason of any wrongful conduct on the part of any of these defendants.

As charged in paragraph 9 of said petition, and which will be more fully explained hereinafter, all sales of cast-iron pipe are in the nature of contracts let to the lowest bidder after advertising for bids, or inviting competition from all manufacturers without regard to their location. Defendants have secured all contracts filled by them in this manner, and could not have driven other pipe works out of said territory except by taking contracts at prices below what such other concerns were willing to bid.

4.

They deny that in order to monopolize the trade in said territory, or in any other territory, or to enforce the price of pipe to an exorbitant or unreasonable rate, or to destroy all competition in regard thereto, by forcing the price of pipe to an exorbitant rate, the defendants did, on or about the 28th day of December, 1894,

34 enter into a contract or combination in the form of a trust or conspiracy in restraint of trade or commerce among the several States in regard to the manufacture and sale of cast-iron pipe, or that they entered into any contract in violation of law, or that was intended to defraud the public in the purchase and use of such pipe.

They are advised that this charge that defendants, in order to monopolize trade and commerce among the several States, entered into a combination or conspiracy to restrain such trade, is evidence either that the act under which this proceeding is instituted is incapable of a clear construction or that the Government has failed to discover distinctions supposed to exist. The offense of monopolizing trade is certainly different from a combination in restraint of trade, and they do not know of which they are accused.

They never at any time entered into any contract or combination in the form of a trust or conspiracy in restraint of commerce among any of the States, or formed any fraudulent or criminal conspiracy in violation or defiance of law, or to defraud the public in the purchase and use of pipe manufactured by them.

It is further denied that they were at the time said petition was filed, operating under the alleged agreement of December 28th, 1894. Each of the respondents did, about the time stated, become members of an association formed for the mutual benefit of its members, and on a plan of co-operation, which in no manner referred to interstate commerce, or illegally restrained the trade of themselves, or any other, as will be hereinafter fully explained.

It is true that they are now engaged in the manufacture of pipe, and whenever they can secure work which makes it necessary, do ship it into other States than those in which their shops are located, and under contracts let by citizens of other States. But they are advised that this is not in restraint of interstate commerce as it is usually defined. They deny the contract, combination, conspiracy or monopoly, whichever it be, in the manner and form as charged in paragraph 4 of the petition.



## 5.

It is not true that they ever formed a fraudulent or criminal conspiracy, or entered into any contract in restraint of trade and commerce among the several States, as repeated in paragraph 5 of said petition, but in answer to said charges they state:

35 It is true, as charged in paragraph 9 of said petition, that all contracts secured by them were, in the main, contracts to furnish pipe to gas, water and municipal corporations, let to the lowest bidders after advertising for bids; that defendants and all other persons engaged in the same business were appealed to by said gas, water and municipal corporations, or were invited or permitted to furnish bids at which they would do certain work. It was the option and probably the duty of such corporations to let their work by biddings instead of making direct contracts or buying in the open markets. These respondents had a right to bid or not, as they might choose, at this special mode of competition.

Previous to December 28th, 1894, or about that date, defendants had bid on such occasions against each other and other companies proposing to take such contracts, and the competition provoked by this mode of dealing, secured to said gas, water and municipal corporations the advantage of ruinous competition to the bidders, while said bidders had no other market in which to dispose of their product. In this manner of buying pipe, and letting all their contracts, the customers prevented the establishment of market prices, and kept the manufacturers constantly arrayed against each other, with strong motives not only to underbid but to otherwise injure the business of each other.

To meet this situation defendants joined an association for their mutual protection in lessening expenses, securing better freight rates, etc., and as such members, had an understanding among themselves, the sole object of which was to secure a fair share of work for each, according to their relative capacity, and to enable each one to continue in operation, but not for the purpose of monopolizing or restraining either State or interstate trade or commerce. In fact, they are advised that from the manner in which said gas, water and municipal corporations bought their pipe and let their contracts, their dealings were of a local character and could not be the subject of interstate commerce. No one of the defendants were restrained from securing work, and the only restraint that might be implied in said arrangement was the understanding that each of defendants were entitled to share in a certain limited portion of the price paid on said contracts, according to their relative capacities. As a means of securing this end it was stipulated as between said defendants that on all contracts secured by each of them within the territory named a "bonus" of so much per ton was charged to their debit and clear-  
36 deny that this "bonus" was determined by how much the alleged combination could force the customer to pay, or that it represented the amount charged for pipe over and above a fair and reasonable price for the same, and above what defendants



would have been willing to sell pipe for if there had been no understanding. As before stated, the price of pipe as between the customer and whichever of defendants secured the contract was fixed by that special mode of competition invited by the customer, and was in no way affected by the "bonus" which had only relation to the defendants' dealing with each other, and did not and was not intended to fix or regulate prices. The price at which defendants sold pipe was reasonable and fair, and was not fixed or regulated by themselves, but by the general competition invited by their customers on each contract. What was miscalled a "bonus" was more in the nature of a premium, and its only object was, as aforesaid, to restrain any one or more of defendants from monopolizing more than a proper share of the trade within said territory, which object the so-called "bonus" would not have accomplished if it had been an amount charged over and above a fair price. But being deducted from and paid out of what was a fair price, it did operate so that no one of defendants could do more than its proper share of said work, without doing so at a loss. As all defendants did about their respective portions of work in said territory, the premiums or "bonuses," so called, equalized each other, and thus accomplished the only object for which they were intended, as aforesaid.

They deny that they ever collected any "bonus" from any of their customers, but allege that they have furnished all pipe and performed all contracts at the price fixed by the biddings therefor.

They deny that any contract, combination or monopoly ever existed between them in the manner and form, and for the purposes stated in paragraph 5 of said petition, and if material they require proof of the same. And they aver that the arrangement above stated was the only understanding between them to effect a division of work previous to May, 1895.

The aggregate capacity of defendants is about as stated in said petition. They, however, deny, that the shipments of pipe for 1896 amount to more than one hundred thousand tons in said territory, which they aver could have been supplied by any two of defendants so as to deprive all others of any share thereof.

As charged in paragraph 6 of said petition, there was nothing in any agreement or understanding which in any manner prevented any of defendants from doing work and furnishing pipe at whatever price was agreed on, or fixed between such defendant and its customer, the so called "bonus" being afterwards deducted and paid from said price, which they aver was the fair and reasonable price for said pipe. The fact that as between these defendants representing but a small per cent. of companies engaged in such business, there was a premium imposed did not affect the price of pipe to said gas, water and municipal corporations, did not prevent each company from doing all that was legitimate and proper to obtain work and sell pipe, and did not prevent the public from obtaining, it at fair and reasonable prices. The incentive under said arrange-

ment for each of defendants to obtain all the work possible was not destroyed, because the so-called "bonus" was in fact burdensome, unless each defendant, did its share of the work, and upon which it also paid premiums to offset or equalize the "bonuses" or premiums paid by the others. If each defendant did relatively the same amount of work, the premiums annulled each other, but otherwise they became penalties.

It is here and now denies that said arrangement operated to advance the market price of pipe, or was intended so to do, or that defendants have in fact charged for pipe more than a reasonable and fair price.

## 7.

It is true as charged in paragraph 10, of said petition, that defendants have large sums invested in the manufacture of pipe, each employing and supporting a large number of employes and their families; that each of them is able alone to fill, and have in fact filled, large contract. In fact, from the manner in which said contracts are let any one or two of said factories might by underbidding secure and fill all contracts let in said territory, if there was no check to such unwholesome competition. But it is absolutely false that by means of their very large wealth or capacity, and the inability of others engaged in the same business, they have created a monopoly in the sale of pipe, or crippled and destroyed their rivals. They are advised that there was no legal obligation resting on them to bid more on contracts than their rivals, or refrain from agreeing on a reasonable measure of restraint as among themselves, so that each of them could do its proper share of the work, and thus continue in business for the benefit of themselves, their employes, and the public, and save the large capital they had invested.

They further deny that the association aforesaid formed for the mutual advantage of defendants, in various respects, was illegal or in restraint of trade, or that it was made so by the foregoing understanding which obtained among its members after said association was formed.

## 8.

They admit that on or about May 27, 1895, they changed the arrangement theretofore existing for fixing the premium as among themselves on the tonnage of pipe supplied by each on contracts secured in said territory, but not in the manner and form or for the criminal purposes as charged in paragraph 11, of said petition. The agreement then made was in lieu of the previous plan of co-operation, and was the only understanding existing between them looking to a division of work from that date.

They deny that on and after the date of the proceeding of May 27, 1895, referred to by plaintiff, they had any monopoly of the trade in cast-iron pipe in the territory described but on the contrary they aver that this territory was then, and has been always open to the competition of all the other cast-iron pipe companies in the United States, and that a number of them having a larger aggre-

gate capacity than all defendants, did actually compete on the contracts let therein. Instead of defendants having a monopoly in that or any other territory, they aver the truth to be that the demand for such pipe was limited, and the supply excessive. It was only occasionally that contracts were offered and they were all let after advertising for bids, or inviting direct competition, from all manufacturers of each and every contract. From this manner in which gas, water and municipal corporations procured their supply of pipe a few manufacturers could secure all the orders and drive the others out of business and the inevitable result was not to promote competition, but to destroy the industry. They aver that it was to guard against competition which was unfair and ruinous, and to make it to the interest of each of defendants as members of an association formed for mutual advantages, to accord to the others a fair share of the work let, and at such reasonable prices as would enable all to continue in business, that the arrangement of May 27, 1895 was made.

39 They state that on receiving notice that a contract for pipe was to be let, their representatives, who were experienced in defendants' line of business, and knew the cost of pipe, the state of supply and demand at the time, and what would under all circumstances be a fair and reasonable price on the contract offered, taking into consideration the specifications, time, terms, and prospect of payment, did jointly agree in advance on such a price. They aver that the prices agreed on by their representatives were in all instances fair and reasonable, according to the circumstances of each case, and they most positively deny that to this price was added a "bonus" in any manner or form. After said price was agreed on the question arose as to which of said defendants should have the preference as among themselves, in the bidding thereafter to occur in letting the contract. This was determined by the largest premium of those offered by each to be charged as hereinbefore alleged. The defendants who had not before secured contracts could and did usually offer the largest premiums. The price agreed on, as above stated, among defendants, did not in fact fix or regulate the price at which contracts were obtained, but was only adopted as a fair price, and constituted a basis upon which the defendants could intelligently compete among themselves and determine who should endeavor to secure the order. It was subject to the further modification of that general competition which usually took place, and unless it was further reduced to meet that general competition or was the lowest offer made, did not secure the contract. The purpose and effect of said agreement was to secure to each defendant, as near as possible, a steady demand for its products, while it was impossible to exact exorbitant or unreasonable prices on account of the active competition of their rivals.

They did not restrain the trade of any others, and made no contract in restraint of their own trade.

As each of defendants, as members of said association, maintained its absolute independence, they could only be restrained by volun-

tarily assuming a burden which made it to their interest to allow others to work on similar terms.

They are advised that the fact that gas, water and municipal corporations in the main let all their contracts at public auctions, or by competitive biddings, does not operate to deprive defendants of the right to provide as among themselves for that measure of restraint legal as to all others not engaged in any public or quasi-public business, nor in the manufacture of one of the prime necessities.

40 Denuded of the opprobrious and inflammable characterizations in which the Government deals with defendants' business in paragraph 10 of its petition, and looking beyond the terms to the substance of the alleged combination, there is nothing in it of which the public has a right to complain.

But it is denied that defendants made the agreement on May 27th, 1895, in manner and form and for the purposes as stated in said paragraph 10.

9.

They are advised that it is not material for them to answer petitioner's allegations in paragraph 12th, in which a contract secured in St. Louis by the Howard-Harrison Iron Company is cited as "an example of the unequaled and unmitigated criminal conduct on the part of defendants." But defendants aver that the example chosen is the most perfect illustration of the failure of the "United States" in this case to discriminate between the rights of the States and the rights of the Federal Government.

The contract referred to was let under provisions of the charter of the city of St. Louis, as granted by the State of Missouri, under an ordinance passed by the city of St. Louis in pursuance of its charter rights and under specifications of the water department of said city, 28 in number, with subsections, regulating the making, marking, loading, delivering and piling of pipe, and the kind of material to be used in its manufacture. The contract made provides that the contractor shall do all the work required under the inspection of the water commissioner and his agents, the inspection at the foundry or otherwise, to be at the contractor's expense, and gives to the board of public improvement arbitrary powers to reject pipe made under the contract and to reject bids and obtain new ones at its pleasure.

It is also provided in said contract in accordance with the charter of the city, "that on the complaint of any citizen or tax-payer that any public work is being done contrary to contract, or the work or material used is imperfect or different from what was stipulated to be furnished or done," the board of public improvement should, by commissioners appointed for that purpose, examine into these complaints and make orders binding on all parties.

"And the said party of the first part hereby agrees to receive the following prices as full compensation for furnishing and delivering complete at the city pipe yard, in such order as the water  
41 commissioners may direct, all the water pipe, also for all expenses incurred by or in consequence of the suspension or

discontinuance of said work, as before specified, and for well and faithfully completing and delivering the water pipe, and the whole thereof, in the manner and according to the plans and specifications and requirements of the water commissioners under them, to wit," twenty-four dollars per ton. Bond in the sum of ten thousand dollars was executed, "conditioned that in the event the said Howard-Harrison Iron Company shall faithfully and properly perform contract according to all the terms thereof, and shall, as soon as the work contemplated by said contract is completed, pay to the proper party all amounts due for material and labor used and employed in the performance thereof, then this obligation to be void, etc." Reference is made to said contract and bond, which will be filed on or before the hearing of this case.

They are informed and believe that, before said contract was advertised to be let, the city of St. Louis, by its proper officials, had fixed the sum of twenty-five dollars per ton, at the price at which said pipe and work in connection therewith should be secured, and had determined to pay no more, as will more fully appear by statement of Holman, water comm'r, of St. Louis, which they aver will be filed on or before the hearing.

They aver that the contract to supply said pipe and do said work was let wholly within the State of Missouri, and subject to conditions and regulations purely local and peculiar to that contract.

They have been advised and believe that the letting of said contract was no part of the "trade and commerce among the several States," and that all allegations in regard thereto are immaterial except as an illustration of the unjust and oppressive nature of this proceeding.

10.

They deny most positively that at the time of the filing of the petition in this case any one of the defendants were members of an association having for its object the purposes alleged, either with reference to the contract of December, 1894, or May, 1895, the existence of which has already been denied as charged.

At the time said bill was filed they did belong to an association confined to defendants, having for its purposes the promotion of the interests of the members by securing better and more uniform freight rates, reducing expenses by the establishment and maintenance of joint agencies, the elimination of irresponsible  
42 "middle men," so as to deal directly with consumers, and to secure a fair and equitable division of work among the several members, and to establish regulations for each member's general welfare by an extension of trade and otherwise.

Under said association each member retained absolute control of its own business, manufactured, sold and owned its own pipe, and only submitted to the association in the management of its business for the purposes and to the extent as in this answer stated. No lot of pipe was ever put in transportation by either of defendants that belonged to the association, or any combination or trust, or that was the subject of any trust or combination. Defendants state that said association never owned any pipe or material.



Defendants state generally in answer to plaintiff's petition that no agreement, combination, understanding or conspiracy whatever, was at any time entered into by and between defendants or either or any of them, which did fix or regulate, or was intended to fix or regulate, in any manner the price of any pipe, or material, sold or to be sold, or bartered by defendants or either or any of them. On the contrary they aver the fact to be that in all agreements, arrangements and transactions of defendants with each other and in strict accordance with such mutual understanding of defendants, one of them bidding for supply of such pipe or material had the right to bid and did bid, any price which might be determined by said defendant so bidding.

Defendants state that any and all arrangements as hereinbefore referred to touching prices and bonuses were and were intended to be, simply a plan of co-operation for mutual benefit, which might at any time be departed from in a special case, or wholly abandoned at the pleasure of the parties associated.

They further aver that they have never knowingly, and are advised that they have never in fact, offended against any law, either State or national; that as an evidence of their innocence in this respect they have persistently refused to be blackmailed by all parties claiming to have secured copies of private letters and agreements alleged to have been stolen from them, and which it was insisted showed their guilt under the anti-trust law of Congress, and subjecting them to the penalties therein provided.

Defendants now and here deny any and every allegation of said petition which is not hereinbefore specifically denied or admitted.

43 And now having fully answered, they pray to be hence dismissed.

BROWN & SPURLOCK,  
*Att'ys for Def'ts.*  
W. D. SPEARS,  
*Sol. for S. P. Pipe Works.*

STATE OF KENTUCKY, }  
*Jefferson County.*

Personally appeared before me, William Sackett, notary public for the State and county aforesaid, A. F. Callahan, vice-president of the Dennis Long & Co., and made oath that the foregoing demurrer is not interposed for delay.

A. F. CALLAHAN.

Sworn to and subscribed before me Jan'y 20, 1897.

[SEAL.]

WM. SACKETT,  
*Notary Public, Jefferson Co., Ky.*

Commission expires Jan. 14th, 1900.

STATE OF KENTUCKY, }  
*County of Jefferson.*

Personally appeared before me, Herbert Boone, a notary public in and for State and county, F. B. Nichols, vice-president of the

Howard-Harrison Iron Co., George J. Long, president of *the* Denuis Long & Co., F. C. Miller, president of the Anniston Pipe & Foundry Co., B. F. Haughton, vice-president of the Addyston Pipe and Steel Co., and each of them respectively made oath that the foregoing answer are true to the best of their knowledge, information and belief.

F. B. NICHOLS.

G. J. LONG.

F. C. MILLER.

B. F. HAUGHTON.

Sworn to and subscribed before me this Jan. 19, 1897.

My commission expires June 15, 1897.

[SEAL.]

HERBERT BOONE,  
*Notary Public, Jefferson Co., Ky.*

STATE OF TENNESSEE, }  
*Hamilton County.* }

Personally appeared before me, Henry O. Ewing, clerk, M. Llewellyn, president Chattanooga Foundry & Pipe Company, and C. W. Harrison, vice-president of South Pittsburg pipe works, 44 and made oath that the facts stated in the foregoing answer are true to the best of their knowledge, information and belief.

M. LLEWELLYN.

C. W. HARRISON.

Sworn to and subscribed before me Jan'y —, 1897.

HENRY O. EWING, *Clerk.*

*Shops Located in Territory Covered by Bill in Addition to Members of Association.*

	Capacity per day.
Ohio Pipe Co., Columbus, O.....	150 tons
Lake Shore foundry, Cleveland, O.....	200 "
L. B. Clow & Son, New Comerstown, O.....	75 "
Peninsular Car & Fdy. Co., Detroit, Mich.....	100 "
Shickle, Harrison & Howard, St. Louis, Mo....	60 "
Rusk Fdy., Rusk, Tex.....	50 "
Oregon iron w'ks, Portland, Oregon.....	50 "
Colorado Iron & Fuel Co., Pueblo, Col.....	75 "
West Superior Iron Co., Duluth, Wis.....	75 "

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835 tons



*Shops Located Outside of Territory Mentioned in Bill.*

	Capacity per day.
Donaldson Iron Co., Emaus, Pa.....	100 tons
Warren Fdy. & Mach. Co., Phillipsburg, N. J.....	200 "
McNeal Pipe & Fdy. Co., Burlington, N. J.....	225 "
R. D. Wood & Co., Millville, Florence, Camden, N. J.....	400 "
Reading Fdy., Lmt'd., Reading, Pa....	125 "
Jackson & Woodfin, Berwick, Pa.....	75 "
Buffalo Cast Iron Pipe Co., Buffalo, N. Y.....	100 "
Glamorgan Iron Co., Lynchburg, Va.....	75 "
Nat. Pipe & Fdy. Co., Lmt'd., Scottsdale, Pa.....	200 "
Utica Pipe Fdy. Co., Utica, N. Y.....	50 "
	<hr/> 1,550 tons

45      *Affidavit of Martin Manion. Filed by Complainant.*

(Endorsed:) Filed Jan. 25, 1897. Henry O. Ewing, clerk.

STATE OF LOUISIANA, }  
Parish of Orleans, City of New Orleans. }

Before me, George W. Flynn, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified—

Personally came and appeared Martin Manion, who, after having been duly sworn according to law, did depose and swear:

That he is a member of the firm of Manion and Company, now in liquidation, the members of which firm are Martin Manion, affiant, and Mrs. Mathilda Fitzpatrick, both of this city; that the said firm is now liquidating its business through its duly appointed liquidators, Martin Manion and John Fitzpatrick.

That during the year 1895, affiant was the active business manager and director of the firm of Manion & Co., that on the 9th day of February, 1895, with the intention of bidding in the contract for laying pipes and extending the mains of the New Orleans Water Works Company, he asked for propositions from the leading foundries of the South and Southwest. We were not successful in receiving propositions, as we only received but comparatively few bids and these were at such prices as to compel us to give up the idea of bidding. For instance we received from the Chattanooga foundry and pipe works, an offer of date Jan'y 29, 1895, attached hereto and marked "A" in blue pencil, to furnish the pipe for \$21.75 per ton, two thousand pounds.

A few days before the time fixed for the opening of the bids we were offered the pipe required—pipe of 30 inches—at (\$14) fourteen dollars per ton, and all other sizes at (\$15) fifteen dollars, all to be subject to the usual test and inspection required by the water works company of New Orleans. This last-named offer was made by the Radford Pipe and Foundry Company, of Virginia. Upon this proposition we based our bid for the water-works contract, and we were

awarded the contract at the following figures, to wit, \$70,413.66. After the award we received a letter stating that all of the pipes could be purchased for \$12 to \$14 per ton, cash, but the order would have to be billed to go outside of the United States. The letter referred to was from Guild & White of Chattanooga. Affiant visited the writer of the letter and was assured by him that this  
46 could be done very easily but for the fact that the Chattanooga foundry and pipe works had posted all the pipe firms that our firm were looking for lower prices and that they should not quote below the prices fixed by the Chattanooga foundry which was \$22.75 per ton.

Affiant's effort to obtain the pipe at a less figure than submitted to the water works company, resulted in a failure, as he could not get a cheaper figure, the other foundries refusing to compete. Affiant was then compelled to leave the order required with the Radford people which company affiant visited at their works in Radford, Va., and was assured by that company that the pipe would be furnished promptly.

Instead of furnishing the pipe promptly as agreed, they delayed a considerable time. Affiant in the hope of pushing delivery, again visited the works of the Radford foundry, and was very much surprised to learn that they would be compelled to bill the 30-inch pipe at \$15 00 and other size at \$19.00 per ton.

Affiant protested against this increase, which we suspected to be the work of the Chattanooga foundry and other foundries on account of the great eagerness displayed by them in protesting against the awarding of the contract to the Radford people, as per letters attached hereto and marked in blue pencil "B," "C," "D" and "E" as follows:

1. Document marked "B," being a letter of date March 8, 1895, signed by "the Chattanooga foundry & pipe works, per E. B. Thomasson," protesting against the pipe offered by the Radford foundry.

2. Document marked "B," being a letter from South Pittsburg pipe works, of date 5-10-'95 to Manion & Co., cautioning Manion & Co., against using the prices submitted by the company to Mr. Hungerford, New Haven, Conn., for pipe f. o. b. cars to New Orleans for shipment to Central America.

3. Letter marked "D," from R. D. Wood & Co., to N. O. Water Works Company, of date March 11, 1895, protesting against the contract (M. & Co.) using certain pipe.

4. Letter from N. O. Water Company to Manion & Co., of date March 15, 1895, requesting the name and location of the factory which was to furnish the pipe. Letter marked "E."

The proposed increase in prices we were forced to accept, as we were under heavy bond to commence work and complete same within a fixed period.

We were not only put to great and vexatious annoyances and delays, but were put to great loss and expense by reason thereof.

47 Later on, and after work had been commenced, we were notified by the Radford people that they could not furnish certain portions of the pipe, and asking permission to transfer that portion of their contract to the Chattanooga foundry at \$19.00 per ton. This affiant was compelled to accede to.

On account of delays in furnishing pipe we were compelled to start work at other points than those indicated in the contract, causing us great expense, annoyance and loss of money. From that cause alone we suffered to the extent of \$1,500, because the frequent changes from place to place, and the irregular arrivals of pipe causing us great expense in yarding and storing pipes, a city ordinance prohibiting the storing of pipes in the streets being strictly enforced. Besides the continued hauling and rehauling to meet the exigencies of the occasion added expense and cost not originally contemplated.

Affiant submits herewith as part of this affidavit a detailed statement of the loss incurred by his company by reason of the increased charges, which his firm was compelled to undergo in order to successfully execute the contract with the water works company, which statement shows that he paid \$— over and above what he should have paid.

Affiant, summarizing his losses on the contract due to the exaction and combinations of the different pipe companies, hereinbefore mentioned, thusly :

Loss suffered by difference in price paid and what he contracted to pay as per accompanying statement marked "F".....	\$4,792 36
Loss occasioned through vexatious delays and failure to deliver pipe.....	1,500 00
Paid for storing and yarding.....	1,000 00
In all.....	\$7,292 36

In reference to the pipe purchased from the Chattanooga foundry for the sewerage contract, the price of which was \$18.50 per ton of 2,000 pounds, affiant states that he was offered this pipe for \$14.00 per ton of 2,000 pounds, provided affiant would represent that the pipe was for shipment to South America. This affiant declined to do, and in consequence paid \$4.50 additional per ton, for say, 1,000 tons, making in all \$4,000, which affiant paid in excess of what he should have paid.

MARTIN MANION.

48 Sworn to and subscribed before me, this 16th day of Dec.,  
A. D. 1896.

GEO. W. FLYNN,  
[SEAL.] Notary Public, Parish of Orleans, La.

## EXHIBITS TO AFFIDAVIT OF MARTIN MANION.

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

"A."

CHATTANOOGA, TENN., *January 29th, 1895.*

Mess. Manion &amp; Co., 171 Baronne St., New Orleans, La.

GENTLEMEN: Referring to contract to be let by the City Water Company, New Orleans, on the 31st January, we will furnish you the pipe as per specifications for \$21.75 per ton, two thousand pounds, f. o. b. cars New Orleans, La. Will furnish special castings, such as tees, crosses, elbows, etc., for two and a half cents per pound.

Trusting to be favored with your order, we are,

Very truly yours,

CHATTANOOGA FOUNDRY &  
PIPE WORKS.M. LLEWELLYN, *Sec'y.*

M.

Dic.—T.

"B."

NEW ORLEANS, LA., *March 8th, 1895.*

L. H. Gardner, sup't N. O. water works, New Orleans, La.

DEAR SIR: In regard to the cast-iron pipe for the extension system and for which contract was awarded on Feb'y 9th ult., we desire to submit as follows:

First. That we made prices on this amount of pipe to the several contractors, who submitted bids on above date, and we most earnestly desire to impress upon you that we, after a careful reading of your specifications, made our prices, expecting to conform strictly to the requirements contained therein, we have been informed by several contractors who made tenders for this work that our prices on pipe were in fact as low and in some instances lower than prices submitted by reliable manufacturers, for instance, Addyston Pipe & Steel Co., Cincinnati, Ohio; Dennis Long & Co., Louisville, Ky.;

Howard-Harrison Iron Co., Bessemer, Ala.; South Pittsburg  
49 pipe works, S. Pittsburg, Tenn.; Anniston Pipe & Foundry  
Co., Anniston, Ala.; R. D. Wood & Co., Philadelphia, Penn.,  
and others.

We have information from a reliable source that pipe is now being shipped on the contract, that in our opinion does not comply with your specifications, and is not such pipe as was intended by you to be used in your system.

We are informed that the contractors who are to furnish this pipe have ignored the spirit and intent of your specifications, and that they are now preparing or have already shipped and expected to ship a lot of 30-inch pipe that has been in their yard for several years, and is in fact the balance of a lot of rejected or culls left over from a contract with the Syracuse, N. Y., Water Co., the Syracuse Water

Co., as we understand, refusing to accept this pipe on the grounds that it was unsuitable for their purposes, namely, for use in their system of water works, said pipe failing to come up to the requirements of their specifications, which were about the same as is usually enforced by all first-class water companies.

Now, what we particularly desire to call your attention to is the manifest injustice to us, which will exist if you allow this class of pipe to be used in this contract. We do not hesitate to say that we could have made prices on the quality of pipe to which we have referred, and would have been glad to furnish it at possibly less figures that were quoted.

We based our bid for the pipe with the intention of furnishing such pipe as was called for by your specifications, and as such pipe as we have furnished your company for the past several years.

We do not want to appear to dictate to you in this matter, but we believe that in justice to ourselves, as manufacturers of pipe, we should protest against the use of an inferior material than called for under your specifications.

Very respectfully,  
(Signed)

CHATTANOOGA FOUNDRY &  
PIPE WORKS,  
Per E. B. THOMASSON.

"C."

(Personal.)

SOUTH PITTSBURG, TENN., 5, 10, '95.

Messrs. Manion & Co., New Orleans, La.

GENTLEMEN: Again referring to your favor of 8th inst. I understand that the New Orleans letting that you refer to will take place on 13th inst., and my friendship with your Mr. Manion prompts me to caution you in regard to some telegraphic correspondence I have had with Mr. H. Hungerford, of New Haven, Conn. I do not know that Mr. Hungerford has any connection with you at all, but I would dislike very much to see you use the prices that I have quoted him, and thereby lose considerable money. Mr. Hungerford wired us several days ago from New Haven, asking prices on 25,000 feet 6", 7,000 feet 8", f. o. b. cars New Orleans for shipment to Central America. It being approximately the same quantities as required at New Orleans, we hesitated in making him quotations, especially as we did not have the pleasure of knowing him. We, however, decided to telegraph him our lowest prices and yesterday received his telegraphic order, but your Mr. Manion understands and will appreciate the facts that we cannot furnish this pipe for New Orleans consumption. It's true that the transaction looks all right on the face of it, but we could never explain it satisfactorily and it would result in breaking up an arrangement, which is bringing to us as well as others considerable more profit than we would reap if this arrangement should be broken. The parties that

I refer to, as your Mr. Manion well knows, will watch every movement made in New Orleans so far as the purchase of pipe is concerned, and for this reason we would greatly prefer not to run any chances, and as we have other large contracts pending we urgently ask that you wire us at our expense immediately on receipt of this letter stating fully as to whether you have any connection with Mr. H. Hungerford, of New Haven, Conn., or whether you know anything in regard to this Central American deal.

I furthermore wish to say that if there was any safe way in which we could render you assistance we would do so with the greatest pleasure on earth, for I am greatly indebted to Mr. Manion for the first order I ever secured, it being the nine miles of 6" pipe that he ordered of me on my initial trip as a salesman. Please do not fail to telegraph us immediately on receipt of this letter in order that we may accept other contracts that we have now pending.

Yours very truly,

(Signed)

C. W. HARRISON, *V. Pres't.*

NEW ORLEANS, *March 15th*, 1895.

Messrs. Manion & Co., city.

51 GENTLEMEN: The correspondence between Mr. Gardner, our superintendent and your firm relative to the inspection of the pipe to be used by your firm in its contract with our company has been submitted to me for consideration.

Mr. Gardner's course in requesting information as to the manufacturers of iron pipe who are to furnish the pipe to be laid is approved. We deem it important both to your firm and our company that unless the pipe is to be furnished by manufacturers with whose pipe we are familiar we should have a representative present at the factory test of the pipe provided for in the specifications annexed to your contract. It seems for the best interest of both parties that if any pipe is rejected for defects the rejections should be at the factory before any expense in handling, freight, &c., is incurred. For our company I therefore respectfully ask you to give us the name and location of the factory where the pipe is manufactured, or if the pipe is on storage at any other place than the place of manufacture, I request that the locality be given us as we desire to have a representative present at the test.

I trust that you will consider our request reasonable, and in the interest of both parties to the contract. If there were an installation for testing such pipe in the city we would not be so urgent in our request.

Respectfully yours,

R. E. CRAIG,  
*Pres't N. O. Water Co.*

CHATTANOOGA, TENN., *Feb'y 23*, 1895.

Mr. M. Manion, care Manion & Co., New Orleans, La.

DEAR SIR: I received your note and am sorry you could not remain over, but I will see you in New Orleans Monday in reference to prices on pipe.

Very truly yours,

THOMASSON.

Dic.—T.



"D."

NEW ORLEANS, LA., *March 11, 1895.*

To the New Orleans WaterCo., New Orleans, La.—L. H. Gardner,  
Esq., sup't.

DEAR SIR: We feel that we should as manufacturers of cast-iron water pipe enter this our protest, and at the same time bring to your notice the fact that the contractor under your letting of February 9th has or is about to close a deal for a lot of pipe which were made some three years ago for the Syracuse water works, of Syracuse, N. Y., and by them and others rejected as unfit for water-works use.

Your specifications were in their letter very rigid, in their spirit more so, yet we bid to all contractors under them, expecting to be called upon to comply with their spirit as well as their letter, and furnish the best article of cast-iron pipe known to the trade.

It would seem unfair to the several manufacturers bidding to accept from one party rejected pipes, while holding others to a strict specification.

This pipe being 30-inch goes into a vital part of your system (the feed main). Should it prove defective you are without source of supply for a large city and subject to vexatious suits should a fire or other loss occur.

Not wishing to appear to dictate, but feeling that in fairness to ourselves and others the matter of this condemned pipe should be brought to your attention,

We are yours, &c.,  
(Signed)

R. D. WOOD & CO.,  
P'r I. WISTAR.

M'CH 21, 1895, & P. M.

Have advices this evening and can now name 17.75. If any good wire me, if not please write me a line.

Yours, &c.,

L. W.

*Affidavit of Cephas M. Brown, Filed by Complainant.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

UNITED STATES OF AMERICA, } ss:  
*Northern District of Georgia, County of Fulton,*

Before me personally appears Cephas M. Brown, who, being duly sworn, deposes and says: That he is secretary of the water board, and also secretary of the water works of the city of Atlanta; that as such it is his duty to keep a correct record of the minutes of the water board; to keep the books of the Atlanta water works; and also to receive and audit invoices or articles purchased for the use of said Atlanta water works; that the annexed three sheets, marked "Extracts from the minutes of the board of water commissioners of Atlanta, Georgia," contain true copies from the

minute book of said board, and that the annexed eight sheets or parts of sheets designated as "Statement of pipe furnished to the city of Atlanta by Anniston Pipe and Foundry Company of  
 53 Anniston, Alabama," contain true and correct copies of the invoices of pipes purchased by the city of Atlanta from said pipe and foundry company. The originals being now on file in the proper office in the city of Atlanta. Deponent further says that the dates, weights and prices therein set forth are correct.

CEPHAS M. BROWN.

Sworn to and subscribed before me this 18th day of December, 1896.

[SEAL.]

N. R. BROYLES,  
 U. S. C. C. Comm'r, N. D. of Ga.

*Extracts from the Minutes of the Board of Water Commissioners of Atlanta, Ga.*

Meeting of October 30, 1895.

Motion, Commissioner Nelms, that proposition Anniston pipe works to furnish pipe at \$22.00 per ton be accepted. Carried. (M. B. Forbett, secretary.)

Meeting of Nov. 5, 1895.

President was asked to have the city attorney draw up contract with the Anniston pipe works of Ala., for furnishing pipe at \$22.00 per ton and specials at 2½ cents per lb. (M. B. Forbett, sec'y.)

Meeting of Feb. 5, 1896.

Moved and adopted that the superintendent obtain bids at once on pipe, hydrants and valves and submit same to this board at its next regular meeting. (M. B. Forbett, sec'y.)

Meeting of Feb'y 19, 1896.

Bids on pipe were then opened, prices being as follows:

Anniston Pipe & F. Co., \$24.00 per ton f. o. b. Atlanta, and 2½ cents per lb. on specials f. o. b. Atlanta.

Howard-Harrison Co., \$24.25 per ton on pipe, f. o. b. Atlanta, 2½ cents per pound on specials, f. o. b. Atlanta.

South Pittsburg pipe works, South Pittsburg, Tenn., \$24.25 per ton on pipe, 2½ cents per lb. on specials f. o. b. Atlanta.

Chattanooga F. & pipe works, Chattanooga, Tenn., \$24.50 per ton on pipe f. o. b. Atlanta, 2½ cents per lb. on specials f. o. b. Atlanta.

R. D. Wood & Co., Philadelphia, Pa., 6 and 8 inch, \$24.70 per ton on pipe f. o. b. Atlanta, 10 and 12 inch, \$24.15 per ton on

54 pipe f. o. b. Atlanta, 2½ cents per lb. on specials f. o. b. Atlanta and in lots 300 tons 6 and 8 inch at \$23.95 f. o. b.

Atlanta, 10 and 12, \$23.20 f. o. b. Atlanta, specials 2½ cents per lb. It was then motioned and adopted that owing to bids being excessive that all bids be rejected. (M. B. Forbett, secretary.)

## Meeting of March 4, 1896.

Mr. Dimmick, vice-president of the Anniston Pipe & Foundry Co., was then also heard from *in re* board's again accepting bids on pipe, as bids at previous sessions have been rejected herewith. Mr. C. W. Harrison, V. pres't South Pittsburg pipe works, who was also heard from, was allowed to present proposals, they being considered as voluntary, same were received and ordered filed. (M. B. Forbett, secretary.)

Bid of Anniston Pipe & Foundry Company being on pipe \$22.75 per ton f. o. b. Atlanta, on regular or ordinary specials 2½ cents per lb., irregular specials 3 cents per lb.

Bid of South Pittsburg pipe works, South Pittsburg, 'Tenn., on pipe \$23.19 per ton f. o. b. Atlanta (bids on file in water-works office).

*Statement of Pipe Furnished to the City of Atlanta by Anniston Pipe & Foundry Co., Anniston, Ala.*

		Tons.		Pounds.			
Nov. 12, '95.	6 pcs. 30" pipe	16	1,000 at \$22 00.	363	00		
	6 " 30" "	16	330	355	63		
	6 " 30" "	16	664	359	30		
							\$1,077 93
Nov. 13, '95.	6 " 30" "	16	712	359	83		
	6 " 30" "	16	458	357	04		
							716 87
Nov. 16, '95.	6 " 30" "	16	828	361	11		
	6 " 30" "	16	478	357	26		
							718 37
Nov. 15, '95.	6 " 30" "	16	798	360	78		
	1 " 30-6" tee	1	622	65	55		
							426 33
Nov. 18, '95.	6 " v 30" pipe	16	678	359	46		
	6 " 30" "	16	670	359	37		
	6 " 30" "	16	688	359	57		
							1,078 40
Nov. 19, '95.	6 " 30" "	16	1,042	363	46		
	6 " 30" "	16	1,082	363	90		
	6 " 30" "	16	912	362	03		
	1 " 30" tee	1	1,396	84	90		
							1,174 29
Nov. 20, '95.	6 " 30" pipe	16	960	352	56		
	6 " 30" "	16	572	358	29		
	6 " 30" "	16	1,005	363	06		
	1-30" plug	..	568	} 24c.	84	20	
	1-30" x 10 cross	..	2,800				
							1,168 11
Nov. 21, '95.	6 " 30" "	14	658	315	24		
	1 " 30 x 10 cross	1	797 2½	69	93		
							385 17
55							
Nov. 22, '95.	6 " 30" pipe	16	594	358	54		
	6 " 30" "	16	682	359	50		
	6 " 30" " B	14	84	308	92		
	6 " 30" "	16	700	359	70		
							1,386 66
Nov. 23, '95.	6 " 30" pipe	16	388	356	27		
	6 " 30" "	16	514	357	65		
	6 " 30" "	13	1,734	305	07		
	6 " 30" "	13	1,810	305	91		

	6	"	30"	"	13	1,864		306 50	
	6	"	30"	"	16	256		354 82	
	6	"	30"	"	13	1,940		307 34	
	1	"	30 x 10	" tee	1	643	2½	66 08	
Nov. 25, '95.	6	"	30"	pipe	16	692		359 61	2,359 64
	6	"	30"	"	14	368		312 05	
	10	"	6"	"	2	16		44 18	
Nov. 26, '95.	6	"	30"	"	14	50		308 55	715 84
	6	"	30"	"	14	444		312 88	
	6	"	30"	"	14	150		309 65	
	6	"	30"	"	14	704		315 74	
	6	"	30"	"	14	602		314 62	
	6	"	30"	"	14	290		311 19	
	1	"	30 x 6	tee pipe	1	621	2½	65 52	1,938 15
Nov. 27, '95.	6	"	30"	pipe	14	160		309 76	
	6	"	30"	"	14	146		309 60	
	6	"	30"	"	14	308		311 39	
	6	"	30"	"	14	442		312 86	
Nov. 29, '95.	6	"	30"	"	14	458			1,243 61
Nov. 30, '95.	6	"	30"	"	14	582		314 40	313 04
	6	"	30"	"	14	406		312 47	
	6	"	30"	"	14	188		310 07	
	6	"	30"	"	14	322		311 54	
	6	"	30"	"	14	406		312 47	
	6	"	30"	"	13	1,928		307 21	
	6	"	30"	"	14	640		315 04	
	6	"	30"	"	14	62		308 68	
	6	"	30"	"	14	220		310 42	
	1	"	30-6	tee pipe	1	610	2½	65 25	2,867 55
Dec. 2, '95.	6	"	30"	pipe	14	354		311 80	
	6	"	30"	"	14	474		313 21	
	6	"	30"	"	13	1,988		307 87	
	6	"	30-6	tee pipe	1	585		64 62	997 59
Dec. 3, '95.	6	"	30"	pipe	14	344		311 78	
	6	"	30"	"	14	316		311 48	
	6	"	30"	"	13	1,662		304 28	927 54
Dec. 4, '95.	6	"	30"	"	14	170		309 87	
	6	"	30"	"	14	154		309 69	
	6	"	30"	"	14	110		309 21	
	6	"	30"	"	14	1,592		325 51	
	1	"	30-6	tee pipe	1	590		64 75	1,319 03
Dec. 5, '95.	6	"	30"	pipe	14	342		311 76	
6,	6	"	30"	"	13	1,760		305 36	
	6	"	30"	"	14	394		311 23	
	6	"	30"	"	14	20		308 22	
	6	"	30"	"	13	1,888		306 77	
	6	"	30"	"	14	220		310 42	1,853 76
56									
Dec. 6, '95.	6	"	30"	"	13	1,956		307 52	
	6	"	30"	"	14	190		310 09	
	6	"	30"	"	13	1,924		307 16	
	1	"	30-12	elbo-	1	465	2½	126 88	
	1	"	30-6	tee	1	610			1,051 65
Dec. 10, '95.	50	"	6"	pipe	10	309		223 40	
	2	"	10"	"		1,470		16 17	239 57

354  
47

Dec.	12,	'95.	6	"	30"	"	14	26	308 29
			6	"	30"	"	14	276	311 04
			1	"	easy bend pipe		1	582	64 55
Dec.	11,	'95.	6	"	30"	pipe	14	282	311 10
			2	"	30-6 tee pipe		2	1,212	130 30
Dec.	13,	'95.	6	"	30"	pipe	14	398	312 38
			6	"	30"	"	14	656	315 22
			6	"	30"	"	14	432	312 75
			6	"	30"	"	13	1,597	303 57
			6	"	30"	"	14	234	310 57
Dec.	14,	'95.	6	"	30"	"	14	528	313 81
			6	"	30"	"	13	1,894	306 83
			6	"	30"	"	14	88	308 97
Dec.	17,	'95.	6	"	30"	"	14	142	309 56
			6	"	30"	"	13	1,914	307 05
			6	"	30"	"	13	1,878	306 66
			6	"	30"	"	13	1,722	304 94
			6	"	30"	"	14	.....	312 44
			6	"	30"	"	14	62	308 68
			6	"	30"	"	14	438	312 82
			6	"	30"	"	14	236	310 60
			6	"	30"	"	14	234	310 57
			6	"	30"	"	14	406	312 47
			1	"	30-6" tee pipe		1	630	65 75
Dec.	19,	'95.	6	"	30"	pipe	13	1,962	307 58
			6	"	30"	"	14	304	311 34
			6	"	30"	"	14	26	308 29
			6	"	30"	"	13	1,922	307 14
			6	"	30"	"	14	574	314 31
			6	"	30"	"	13	1,570	303 27
			6	"	30"	"	14	110	309 21
			6	"	30"	"	13	1,730	305 03
			6	"	30"	"	14	28	308 31
			6	"	30"	"	14	610	314 71
			6	"	30"	"	13	1,867	306 54
			6	"	30"	"	13	1,710	304 81
Dec.	23,	'95.	6	"	30"	"	13	1,784	305 62
			6	"	30"	"	14	250	310 75
			6	"	30"	"	13	1,988	307 87
			1	"	30-6" cross		1	670	133 15
			1	"	30-6	"	1	656	80 58
			1	"	30-12 fl'ng'd tee		1	686	.....
Dec.	27,	'95.	6	"	30"	"	14	458	313 04
Dec.	30,	'95.	46	"	10"	"	16	1,724	370 96
			12	"	4" H. bend		1	196	63 40
			1	"	10-4	tee		340	.....
Dec.	31,	'95.	2	"	30"	pipe	5	722	117 94
			1	"	30 x 6 cross		1	712	75 65
			1	"	10-4	tee		314	.....
			1	"	30 flg. pipe			5,888	117 76
			1	"	30 ell	"		3,290	.....

57

July 24, '96.	1 12 x 8 reducer	230 #	at 2½c.....	5 18
16, '96.	66 6" pipe, 13 tons &	964 #	at \$22.75.....	306 72
21, '96.	12 6" x 4" tees	2,166 #	at " }	72 90
21, '96.	6 6" "	1,074 #	at 2½c. }	
30, '96.	6 6" "	1,280 #		
30, '96.	8 4" hyd. bends	1,466 #	3,370 # at 2½c...	75 83
	1 6" 1-16 "	112 #		
	2 12" x 16" red.	356 #		
Aug. 5, '96.	1 6" 1-16 bend	104 #	804 # at 2½c...	18 09
	4 4" hyd.	700 #		
17, '96.	2 4" x 3" red.	132 #	at 23c., less ft. 11c.	2 86
Sept. 24, '96.	6 6" to 4" red.	454 #		
	6 6" elbows	796 #		
	4-4 to 3" red.	248 #		
	6 4 elbows	417 #		
		1,910 #	at 2½.....	42 98
Oct. 10, '96.	95 joints 6" pipe, 18 tons	1,548 #	at 22.75....	427 11
13, '96.	94 " 6" "	18 " 1,234 #	" " ...	423 54
15, '96.	1 ¾" meter special	112 #	at 2½.....	2 52
29, '96.	3 30" pipe, 8 tons	144 #	at \$22.75.....	183 64
	3 30" sleeves	2,602 #		
	1 24" "	440 #		
		3,042 #	at 2½.....	68 45
Nov. 16, '95.	2 30" "	1,764	at 2½c.....	39 69
May 12, '96.	13 pcs. 12" pipe	6 880	at 22.75.....	146 51
	2 " 16 x 6 "	1,362		
	1 " 16 x 8 tee pipe	620		
	2 " 12 x 3 " "	648		
	1 12 x 4 "	292		
	1 12 x 6 "	324		
	1 " 12" band	346		
	1 " 12 x 12 reducer	380		
	1 " 16 x 10 "	326		
	1 " 12 x 6 "	164		
	2 " 12 x 4 crosses			
	Above specials,	5,122 #	at 2½c.....	115 25
May 20, '96.	130 " 6" pipe	26 640	at 22.75.....	598 78
July 1, '96.	3 12" x 3" tees	948	at 2½c., 22.14, less ft. 79c.....	21 35
	9, '96. 104 " 6"	" 21 70	at 22.75.....	478 55
	11, '96. 100 " 6"	20 344	at " .....	458 91
	13, '96. 100 " 6"	" 20 868	" .....	464 87
58				
Jan'y 8, '96.	Wts. not on statement.....			183 15
9, '96.	" " " .....			4 00
				187 15



Mar. 5, '96.	1 30-6" tee	2,645 # at 2½c., 66.13		
		(less fr. paid, 2.13).	64 00	
17, '96.	1 30-6 "	2,640 #	} 2,938 # at 2½.	73 45
	1 12-4 "	298 #		
13, '96.	1 30" pipe flanged	5,350 # at 2..	107 00	
	1 box bolts	64 # at 2½.	1 60	
				246 05
30, '96.	2 10" pipe	1,392 # at \$22.75 per ton.	15 83	
	24 6-4 tees	3,900 #		
	1 10" "	376 #		
	3 6-4" reducers	204 #		
		4,480 # at 2½.	100 80	
			116 63	
	Less fr't paid.....		4 70	
				111 93
Apr. 2, '96.	9 4" hyd. bends	1,634 #		
	1 10-6 red.	136 #		
	1 6-4 "	64 #		
		1,834 at 2½.....	41 27	
Apr. 10, '96.	32 20" pipe, 37 tons	1,084 # at 22.00.	62 89	
13, '96.	32 20" " 41 "	170 # at "	837 87	
	2 reducers	2,604 # at 2½c..	55 59	
			896 46	
	Less fr't.....		63 02	
			833 44	
	Less damaged pipe.....		15 00	
			818 44	
16, '96.	16 20" pipe 19 tons	1,060 # at 22.00.....	429 66	
	Less fr't....		31 25	
			398 41	
20, '96.	16" 20" 19 tons	1,044 # at 22.00.....	429 48	
	1 20-10 red.	166 #		
	1 20-10 tee	1,198 #		
	— — —	1,364 # at 2½.....	30 69	
			460 17	
	Less fr't.....		32 32	
			427 85	
59	16 20" pipe 18 tons	1,898 # at 22.00.....	416 88	
	Less fr't.....		30 31	
			386 57	

28 12" " 13 tons 862 # at 22.75 ..	305 56
10 reducers and crosses, 3,464 # at 2½c.	77 94
	<hr/>
	383 50
Less fr't... ..	24 22
	<hr/>
	359 28

Apr. 24, '96. 13 20" pipe 15 tons 988 # at 22.00.....	340 87
" 27, '96. 42 12" " 20 tons 502 at 22.75.....	460 69
Reducers and tees 1,926 # at 2½c. ....	43 33
29, '96. 42 12" pipe 20 254 #.....	457 89
6 12-3" tees # 1,986 at 2½c.....	44 69

*Affidavit of Cephas M. Brown.*

(Endorsed :) Filed Jan. 25, 1897. Henry O. Ewing, clerk.

UNITED STATES OF AMERICA, }  
 Northern District of Georgia, Fulton County, } ss:

Before me personally appeared Cephas M. Brown, who, being duly sworn, deposes and says that he is secretary of the board of water commissioners of the water works department of the city of Atlanta, in the State of Georgia; that as such secretary he is the proper custodian of the minute books of said board of water commissioners, containing the minutes of the various meetings of said board; that the annexed sheet contains a true and correct copy of an extract from the minutes of said water board of April 10, 1896.

(Signed)

CEPHAS M. BROWN.

Sworn to and subscribed before me this 4th day of January, 1897.

[SEAL.]

N. R. BROYLES,

U. S. C. C. Comm'r, Northern Dist. Ga.

*Extracts from the Minutes of the Board of Water Commissioners of Atlanta, Ga.*

Meeting of April 10, 1896.

60 Commissioner Torbett moved that the superintendent be instructed to order from the Anniston Pipe & Foundry Co. enough pipe to finish the above work, and close the contract with the Anniston Pipe & Foundry Co. by accepting their bid of \$22.75 per ton for pipe and 2½c. per pound for specials, to be delivered f. o. b. Atlanta, Ga., to be used by the department during the remainder of the year 1896.

Carried.

(CEPHAS M. BROWN, *Secretary.*)  
 CEPHAS M. BROWN, *Secretary.*

*Affidavit of James H. Bible.*

(Endorsed :) Filed Jan. 25, 1897. Henry O. Ewing, clerk.

In the Circuit Court of the United States at Chattanooga.

UNITED STATES

vs.

ADDYSTON PIPE &amp; STEEL CO. ET AL. }

James H. Bible makes oath that he has been informed by M. L. Holman, water commissioner of St. Louis, that defendant, Howard-Harrison Iron Company, has shipped to said city of St. Louis, since the 11th day of December, 1896, 1,700 tons of cast-iron pipe, under a contract dated the 13th of October, 1896.

Affiant further states that soon after the petition in this cause was filed, he went to the city of St. Louis and to the office of the water commissioners of said city and conversed in person with the parties employed in said office in reference to this case and a combination between defendants; that he was informed by Mr. Charles H. Holland, chief clerk and in charge of the office about all the time when affiant was present, that the defendants hereto were so favorably situated as to freight rates with reference to the city of St. Louis, that they were able to keep the price of cast-iron pipe at about twenty-three dollars per ton, and that twenty-three dollars was as cheap as any one not in the combine, meaning defendants, could make prices for St. Louis, by reason of said freight rates discriminating against said other companies. Affiant here copies a clipping taken from the St. Louis Globe-Democrat, a newspaper published in the city of St. Louis, on the 14th day of December, 1896:

"We congratulate ourselves, said Mr. Holland, that the trust is satisfied with a small rake-off, and does not squeeze out as much as it might."

61 There is nothing to prevent the trust from holding the price up around \$23.00 a ton, as that is about the lowest figure at which the R. D. Wood Company of Philadelphia, which is the nearest independent competitor of the trust companies, can deliver the pipe here. The plan of the trust is to absorb all competition within equal distance of St. Louis. In 1893, the only companies in the trust were the Howard-Harrison Co., Dennis Long & Company and the Addyston Pipe & Steel Company. Their bids on a contract were \$24.90, \$26.80 and \$25.60. They were all thrown out as excessive and a reletting advertised.

The Chattanooga Company was induced by Mr. Holman to come in with a bid and the contract was awarded to it at \$19.40, which made the total cost \$30,000 less than would have been paid under the lowest bid at the first letting.

Before the next letting, however, the Chattanooga Company was brought into line, and it has been in the trust ever since.

The St. Louis Foundry Company came into existence a few years ago and obtained a few contracts, but it was bought out and closed up.

The territory is apportioned out among the companies. Of twelve lettings since January 6, 1892, the Howard-Harrison has received the contract ten times. Denuis Long & Company have been bidding for twenty years and have never received a contract, but all the Milwaukee contracts go to this company.

Affiant states that the Holland referred to in this publication is the chief clerk aforesaid, who told this affiant in substance what is contained in said newspaper article. The publication was made with reference to this suit. Affiant here copies another newspaper clipping, taken from some daily newspaper in St. Louis, the name of which he cannot give, but which he procured from a newsboy while in M. L. Holman's, water commissioner, office. The clipping is an interview between a newspaper reporter and said M. L. Holman, and the statement of said M. L. Holman in said interview is as follows:

"No, I can't say there is a trust. I don't know that there is. All I know is that the price of iron pipe, during the past three years has been all out of proportion to the price of cast iron and its fluctuations have been unreasonable."

Affiant states that said Holman told him in substance what is contained in said interview.

Affiant further states that he was informed by Mr. Holland, aforesaid, that the Shickle-Harrison-Howard Company of St. Louis, and The Howard-Harrison Iron Company, defendant hereto, were practically the same concerns, or had been formerly at the time the Harrison Iron Company was organized. Affiant further states that he has been unable, after diligent efforts, to procure the affidavits of either said Holland or Holman.

(Signed)

JAMES H. BIBLE.

Sworn to and subscribed this 25th day of January, 1897.

HENRY O. EWING, *Clerk.*

*Affidavit of R. P. Gettys.*

(Endorsed:) Filed Jan. 25, 1897. Henry O. Ewing, clerk.

STATE OF TENNESSEE, {  
Knox County. }

R. P. Gettys makes oath that he is the vice-president of the Knoxville woolen mills, located at Knoxville, Tennessee; that he was such vice-president during the year 1896; that on the 25th day of April, 1896, said Knoxville woolen mills wrote to Chattanooga foundry & pipe works, Chattanooga, Tenn., and to Howard-Harrison Iron Co., Bessemer, Ala., asking for quotations on cast-iron pipe; that attached to this affidavit are copies of said letters taken from the letter book now on file in the office of said Knoxville woolen mills; that on the 29th day of April, 1896, the Chattanooga

foundry & pipe works replied to said inquiry, quoting said cast-iron pipe at \$22.00 per ton of 2,000 pounds; that on the 30th day of April, 1896, said Howard-Harrison Iron Company replied to said inquiry, quoting said cast-iron pipe at \$22.24 per ton. Affiant attaches hereto the letters received from said Chattanooga foundry & pipe works, and from said Howard-Harrison Iron Co., and makes them part of this affidavit.

(Signed)

R. P. GETTYS, V. P.

Sworn to and subscribed before me this January 6, 1897.

[SEAL.]

CHARLES DUCLOUX,

*Notary Public.*

KNOXVILLE, TENN., 4, 25, '96.

Chattanooga Foundry & Pipe Works, Chattanooga, Tenn:

63 GENTLEMEN: We enclose you memorandum for pipe and fittings, for which you will please name your lowest price, delivered at this place.

We suppose the 8-inch pipe ought to weigh about 42 lbs., and the 6-inch 33 lbs. What will be the approximate aggregate weight of fittings?

Yours truly,

(Signed)

KNOXVILLE WOOLEN MILLS.

R. P. G.

CHATTANOOGA, TENN., April 29, 1896.

Messrs. Knoxville Woolen Mills, Knoxville, Tenn.

GENTLEMEN: Referring to your favor of 25th instant, we propose to furnish you 6 and 8-inch cast-iron water pipe weighing 33 and 42 lbs. per foot for \$22.00 per ton, two thousand pounds, and special castings for two and a half cents per pound, all delivered on board cars Knoxville, Tenn.

We have this pipe in stock and can give you immediate shipment and would be pleased to be favored with your order.

Very truly yours,

CHATTANOOGA FOUNDRY &  
PIPE WORKS,

By E. B. THOMASSON.

KNOXVILLE, TENN., 4, 25, '96.

Howard-Harrison Iron Co., Bessemer, Ala.

GENTLEMEN: We enclose you memorandum for pipe and fittings, for which you will please name your lowest price, delivered at this place.

We suppose the 8-inch pipe ought to weigh about 42 lbs., and the 6-inch 33 lbs. What will be the approximate aggregate weight of fittings?

Yours truly,

(Signed)

KNOXVILLE WOOLEN MILLS.

R. P. G.

BESSEMER, ALA., April 30, 1896.

Knoxville Woolen Mills, Knoxville, Tenn.

GENTLEMEN: Replying to your favor of the 25th, I write to say that our present cash price for the standard 33 lb., 6-inch and 42 lb. 8-inch pipe that you require, delivered on cars at Knoxville, is \$22.24 per ton of 2,000 lbs., and for the ordinary branch casting required to lay the pipe 2½ cents per pound. Shipments to be made when desired by you.

Trusting that we will be favored with your order, we are

Yours truly,  
(Signed)

F. B. NICHOLS, V. P.

*Affidavit of Emory S. Foster.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

STATE OF MISSOURI, }  
City of St. Louis. }

Emory S. Foster makes oath that he is the secretary of the board of public improvements in and for the city of St. Louis aforesaid, that said board of public improvements has control and management of the advertising and letting of contracts for cast-iron water pipe to be used by said city, and has had since the charter of said city was adopted in 1876; that said board of public improvements, when water pipe is wanted, advertises for the same in certain papers in the city of St. Louis; that it is the purpose as well as the duty of said board of public improvements to procure said cast-iron water pipes at the lowest figure possible and in good faith give the contracts in each instance to the party bidding the lowest; that said board of public improvements had no information as to the existence of any combination, trust or conspiracy existing between any pipe works, but at all letting for pipe the Addyston Pipe & Steel Co., Dennis Long & Company, Howard-Harrison Iron Company, Anniston Pipe and Foundry Company, Chattanooga foundry and pipe works and South Pittsburg pipe works, together with all other persons engaged in the manufacture and sale of said cast-iron pipe, were I believe regarded by said board of public improvements as making their bids in good faith and competing honestly for the work.

Affiant states that he is the legal custodian of the books, records and papers belonging to the board of public improvements and he hereto attaches as Exhibits A, B, C, D, E, F, G, H, which are copies of bids made by the parties therein named at the time, and at the prices stated, which said exhibits are true and correct copies from the books and records now in his possession as secretary of said board of public improvements; that all the bids of date August 22, 1893, were rejected by the board aforesaid and bids for the same work were received on the 12th day of Sept., 1893, which two sets



65 of bids are shown by Exhibits A and B. Contract for this work was awarded to the Chattanooga foundry and pipe works on September 14, 1893. The bid by Howard-Harrison Iron Company on August 22, 1893, was \$136,327.50. Their bid on September 12, 1893, was \$107,712.50. All of which contracts were awarded to the parties making the lowest bids as shown by the exhibits, except the bids of August 22, 1893, which were rejected, as hereinbefore shown.

(Signed)

EMORY S. FOSTER.

Subscribed and sworn to before me this fifteenth day of December, 1896.

[SEAL.]

LOUIS A. J. LIPPETT,  
Notary Public.

My term expires September 16, 1900.

EXHIBIT "A."

St. Louis, August 22, 1893.

Water department.

*Abstract of Proposals for Furnishing and Delivering Water Pipe.*

	Quantities.	Howard Harrison Iron Co.		Addyston Pipe & Steel Co.		Dennis Long & Co.	
		Pri.	Am't.	Pri.	Am't.	Pri.	Am't.
3" water pipe.....	10 tons.	24 90	249 00	25 60	256 00	26 00	260 00
4" " ".....	30 "	24 90	747 00	25 60	768 00	26 00	780 00
6 " ".....	1,400 "	24 90	34,860 00	25 60	35,840 00	26 00	36,400 00
12" " ".....	1,560	24 90	38,844 00	25 60	39,936 00	26 00	40,560 00
20" " ".....	2,025	24 90	50,422 50	25 60	51,840 00	26 00	52,650 00
36 " ".....	450	24 90	11,205 00	25 60	11,520 00	26 00	11,700 00
			136,327 50		140,160 00		142,350 00

Rejected.

Office president board of public improvements, St. Louis, Dec. 15, 1896.  
E. L. F. Exhibit "A."

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Letting No. 4038.

## EXHIBIT "B."

St. Louis, Sept. 12, 1893.

## Water department.

## Abstract of Proposals for Water Pipes.

	Quantities.	Chattanooga foundry and pipe works.		Addyston Pipe & Steel Co.		Dennis Long & Co.		Howard Harrison Iron Co.		National foundry and pipe works.	
		Price.	Amount.	Price.	Amount.	Price.	Amount.	Price.	Amount.	Price.	Amount.
36 in. water pipes.....	10 tons.	19 40	194 00	26 00	260 00	19 89	198 90	25 00	250 00	33 74	337 40
4 in. " ".....	30 "	19 40	582 00	26 00	780 00	19 89	596 70	25 00	750 00	33 74	1,012 20
6 in. " ".....	19 40	27,100 00	526 00	36 00	692 40	19 89	378 42	25 00	477 00	33 74	641 22
12 in. " ".....	1,400 "	19 40	27,100 00	26 00	36,400 00	19 89	27,846 00	25 00	35,000 00	33 74	47,038 00
18 in. " ".....	1,400 "	19 40	30,264 00	26 00	40,590 00	19 89	31,028 40	25 00	35,000 00	33 74	47,038 00
20 in. " ".....	2,025 "	19 40	39,285 00	26 00	52,650 00	19 89	40,277 25	25 00	50,625 00	33 74	68,156 25
36 in. " ".....	450 "	19 40	8,730 00	26 00	11,700 00	19 89	8,950 50	25 00	11,250 00	33 74	15,183 00
			109,315 00		142,350 00		108,807 75		137,712 50		129,976 50

E. S. F. Exhibit "B." (Office president board public imp'ts, Dec. 15, 1896.)

Letting No. 4283.

## EXHIBIT "C."

## Water department.

St. Louis, Aug. 7, 1894.

## Abstract of Proposals for 8-in. to 36-in. Water Pipes.

	Quantities.	Chattanooga foundry and pipe works.		Howard Harrison Iron Co.		Addyston Pipe & Steel Co.		Dennis Long & Co.	
		Price.	Amount.	Price.	Amount.	Price.	Amount.	Price.	Amount.
Six-inch water pipes.....	810 tons.	20 20	16,362 00	19 94	16,131 40	21 00	17,010 00	21 47	17,390 70
Twelve-inch water pipes.....	810 "	20 20	16,362 00	19 94	16,131 40	21 00	17,010 00	21 47	17,390 70
Eighteen- " ".....	10 "	20 20	202 00	19 94	199 40	21 00	210 00	21 47	213 70
Twenty- " ".....	1,780 "	20 20	35,956 00	19 94	35,492 20	21 00	37,380 00	21 47	38,316 50
Twenty-four- " ".....	3,350 "	20 20	67,670 00	19 94	66,789 00	21 00	70,350 00	21 47	71,924 50
Thirty-six inch water pipes.....	390 "	20 20	7,676 00	19 94	7,577 20	21 00	7,980 00	21 47	8,163 60
			144,228 00		142,371 60		149,940 00		153,295 80

E. S. F. Exhibit "C." (Office president board public imp'r'ts, St. Louis, Dec. 15, 1896.)

THE UNITED STATES.

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EXHIBIT "D."

Letting No. 4674

St. Louis, Sept. 17, 1895.

Water department.

*Abstract of Proposals for Water Pipes.*

		Addyston Pipe & Steel Co.		Shickle, Harrison & Howard Iron Co.		Howard Harrison Iron Co.	
	Quantities.	Price.	Amount.	Price.	Amount.	Price.	Amount.
20-in. water pipe.....	950 tons.	25 97	24,671 50	26 00	24,700 00	22 47	21,346 50
30-in. " ".....	5,400 "	25 97	140,238 00	26 00	140,400 00	22 47	121,338 00
			164,909 50		165,100 50		142,684 50

E. S. F. Exhibit "D." (Office president board public imp'ts, St. Louis, Dec. 15, 1896.)

EXHIBIT "E."

Letting No. 4710.

St. Louis, Feb. 4, 1896.

Water department.

*Abstract of Proposals for Water Pipes.*

		Addyston Pipe & Steel Co.		Dennis Long & Co.		Howard Harrison Iron Co.	
	Quantities.	Price.	Amount	Price.	Amount.	Price.	Amount.
3-in. water pipe.....	25 tons.	24 37	609 25	26 57	664 25	24 00	600 00
4-in.       "       ".....	75       "	24 37	1,827 75	25 57	1,917 75	24 00	1,800 00
6-in.       "       ".....	1,550   "	24 37	37,773 50	24 57	38,083 50	24 00	37,200 00
8-in.       "       ".....	15       "	24 37	365 55	24 57	368 55	24 00	360 00
12-in.     "       ".....	1,200   "	24 37	29,244 00	24 57	29,484 00	24 00	28,800 00
			69,820 05		70,518 05		68,760 00

E. S. F. Exhibit "E." (Office president board public imp'ts, St. Louis, Dec. 15, 1896.)

EXHIBIT "F."

Letting No. 4998.

St. Louis, July 28, 1896.

Water department.

*Abstract of Proposals for Water Pipes.*

		National foundry & pipe works.		Dennis Long & Co.		Howard Harrison Iron Co.		Addyston Pipe and Steel Co.	
		Quantities.	Price.						
6-in. water pipe.....	900 tons.	20 93	18,837 00	23 40	21,060 00	19 64	17,676 00	23 90	21,510 00
12 " " ".....	1,450 "	20 93	30,348 50	23 40	33,930 00	19 64	28,478 00	23 90	34,655 00
20 " " ".....	350 "	20 93	7,325 50	23 40	8,190 00	19 64	6,874 00	23 90	8,365 00
			56,511 00		63,180 00		53,028 00		64,530 00

E. S. F. Exhibit "F." (Office president board of imp'ts, St. Louis, Dec. 15, 1896.)

Letting No. 5081.

## EXHIBIT "G."

St. Louis, Oct. 6, 1896.

## Water department.

## Abstract of Proposals for 5,050 Tons of Water Pipe.

	Quantities.	Dennis Long & Co.		Chattanooga foundry & pipe works.		Addyston Pipe & Steel Co.		Anniston Pipe & Foundry Co.		Howard Harrison Iron Co.		National foundry & pipe works.	
		Price.	Amount.	Price.	Amount.	Price.	Amount.	Price.	Amount.	Price.	Amount.	Price.	Amount.
36-in. water pipe.....	1,985 tons.	20 20	40,097 00	20 13	30,956 05	21 00	41,655 00	20 00	39,700 00	19 94	39,580 90	20 30	40,295 50
30 " " ".....	2,910 "	20 20	58,782 00	20 13	58,578 30	21 00	61,110 00	20 00	58,200 00	19 94	58,026 40	20 30	59,073 00
20 " " ".....	155 "	20 20	3,131 00	20 13	3,120 15	21 00	3,268 00	20 00	3,100 00	19 94	3,090 70	20 30	3,146 50
			102,010 00		101,656 50		206,050 00		101,000 00		100,697 00		102,515 00

This bid was rejected for informality by the board of public improvements, E. S. F. Exhibit "G." (Office president board public imp'ts, St. Louis, Dec. 15, 1896.)

Letting No. 5085.

## EXHIBIT "H."

St. Louis, Oct. 6, 1896.

## Water department.

## Abstract of Proposals for 4,960 Tons of Water Pipe.

	Quantities.	Dennis Long & Co.		Chattanooga foundry & pipe works.		Addyston Pipe & Steel Co.		Anniston Pipe & Foundry Co.		Howard Harrison Iron Co.		National foundry & pipe works.	
		Price.	Amount.	Price.	Amount.	Price.	Amount.	Price.	Amount.	Price.	Amount.	Price.	Amount.
36-in. water pipe.....	4,920 tons.	20 20	99,384 00	20 13	99,039 60	21 00	103,320 00	20 00	98,400 00	19 94	98,104 80	20 30	99,876 00
30 " " ".....	5 "	20 20	101 00	20 13	100 65	21 00	105 00	20 00	99 00	19 94	98 70	20 30	101 50
20 " " ".....	30 "	20 20	606 00	20 13	603 90	21 00	630 00	20 00	590 00	19 94	588 20	20 30	609 00
12 " " ".....	5 "	21 00	105 00	20 13	100 65	21 00	105 00	20 00	100 00	19 94	99 70	20 30	101 50
			100,186 00		99,844 80		104,100 00		99,200 00		98,902 40		100,688 00

This bid was rejected as informal by the board of public improvements, E. S. F. Exhibit "H." (Office president board public imp'ts, St. Louis, Dec. 15, 1896.)

*Affidavit of J. E. McClure, Filed by Plaintiff.*

(Endorsed :) Filed Jan. 25, 1897. Henry O. Ewing, clerk.

STATE OF TENNESSEE, }  
Hamilton County. }

J. E. McClure makes oath that for about four years prior to May 2, 1896, he was stenographer for the Chattanooga foundry & pipe works, at Chattanooga, Tennessee; that on May 2, 1896, he resigned his position aforesaid; that part of the time he was in the employ of said Chattanooga foundry & pipe works he was required to do the work of a stenographer to an association or organization, the following-named concerns being its members: The Addyston Pipe & Steel Co., Cincinnati, Ohio; Dennis Long & Co., Louisville, Ky.; Harrison-Howard Iron Co., Bessemer, Ala.; Anniston Pipe & Foundry Co., Anniston, Ala.; South Pittsburg pipe works, South Pittsburg, Tenn., and Chattanooga foundry & pipe works, Chattanooga, Tenn.; that having occupied the above positions he knows the facts as they exist in connection with the combination or association of the above-named corporations; that the name of the organization or combination between said corporations is the Associated pipe works; that it was his duty to attend to the filing of all papers, consisting of daily reports of orders secured by the above corporations; semi-monthly reports of shipments by them; keeping copies of the monthly meetings of the members of said Associated pipe works; checking and assisting in checking up the orders, monthly, with the auditor for above concern, received by Chattanooga foundry & pipe works; to keep copies of the general statements made by the auditor every two weeks, which shows the amount that each company belonging to said Associated pipe works had to pay, or is to receive in the way of "bonuses;" that it was also his duty to make typewritten statements of all shipments made by the Chattanooga foundry & pipe works and forward same to auditor every two weeks; that on the 28th day of December, 1894, he, in part, reported a meeting, as stenographer, between the above-named corporations, held in the Bates block, Chattanooga, Tenn.; that at said meeting the Addyston Pipe & Steel Co. and Dennis Long & Co. were admitted into the association or combination already existing between the other four corporations herein named, at which time the name of the Associated pipe works was adopted. At this meeting there were present F. B. Nichols, vice-president of Howard-Harrison Iron Co.; J. K. Dimmick, vice-president Anniston Pipe & Foundry Co.; Geo. E. Downing, president South

70     Pittsburg pipe works; M. Llewellyn, secretary and treasurer of Chattanooga foundry and pipe works, and E. B. Thomas-son, the business manager of the latter company, and who has main charge of the correspondence of said company in regard to contracts for the sale of pipe; also Messrs. Long and A. F. Callahan, members of Dennis Long & Co., and Messrs. Davis and B. F. Haughton, mem-

bers of the Addyston Pipe & Steel Co., the latter being its vice-president.

The proceedings of this meeting are matter of record, each of said defendants having a copy of the same, and the record correctly reports what was done at the meeting. On pages 1, 2, 3, 4 and 5 of Exhibit "A" to this affidavit can be found a correct copy of the minutes of the meeting of December 28, 1894, taken from the records of the Chattanooga foundry & pipe works.

Affiant further states that the various corporations above named held a meeting at No. 8 Bates block, Chattanooga, Tenn., on the 23rd day of January, 1895, at which meeting they adopted a series of by-laws for the government of the combination existing between them. Copies of these by-laws were furnished to each member of the trust. On pages 6 and 7 of Exhibit "A" to this affidavit is a correct copy of the by-laws adopted at this meeting, copied from the original copy in the possession of the Chattanooga foundry & pipe works.

Affiant further states that on pages 8 and 9 of Exhibit "A" is a correct copy, taken from the records of the Chattanooga foundry & pipe works, of the minutes of a meeting held between the members of the Associated pipe works, at Louisville, Ky., on the 16th day of May, 1895.

On pages 9 and 9½ of Exhibit "A" is a correct copy, taken from the records of Chattanooga foundry & pipe works, of a meeting between members of Associated pipe works, held in Louisville, Ky., May 27th, 1896.

On pages 10, 11, 12, and 12½ of Exhibit "A" is a correct copy, from the records of Chattanooga foundry & pipe works, of the minutes of the meeting held by Associated pipe works on Lookout mountain on the 19th and 20th of December, 1895.

On pages 13 and 14 of Exhibit "A" is a correct copy of the minutes of a meeting of the Associated pipe works, held in Cincinnati, Ohio, on the 14th day of February, 1896. This copy is taken from the records of the Chattanooga foundry & pipe works.

On page 15 of Exhibit "A" is a correct copy of the minutes of a meeting held by the Associated pipe works, at Chicago, Ill., on the 13th day of March, 1896. This copy is taken from the records of the Chattanooga foundry & pipe works.

71 On page 16 of Exhibit "A" is a statement, giving the dates and places of meeting, between the members of the Associated pipe works, since their organization and up to March 13th, 1896.

The Chattanooga foundry & pipe works has in its possession, or did have when this affiant quit their employ, copies of the minutes of such various meetings, showing fully what was done at each of said meetings, and the several copies made exhibits to this affidavit are correct as taken from the records belonging to the Chattanooga foundry & pipe works.

Affiant further states that the various corporations composing the Associated pipe works operated their respective shops under the agreement existing between them, and under the various rules, regulations, and by-laws adopted by them from time to time, from



January 1, 1895, to the time this affiant quit their employment, and such operation on the part of said Associated pipe works included the manufacture and sale of cast-iron pipe and transportation of the same into other States than the States of their respective residences.

Affiant further states that the agreement entered into by this combination, as shown by the copies of the minutes of its various meetings, was acted upon by the corporations composing the Associated pipe works and their respective shops operated according to the rules, regulations and by-laws made at such meetings from January 1, 1895, to May 2, 1896, and, as affiant is informed and believes, are still being operated. Affiant further states that the "bonus" spoken of in the minutes represents, substantially, the price charged for pipe, over and above the legitimate price of the same, and the price they would be willing to sell for if the pool or combination did not exist between them, and they had to compete with each other in open market, and the price at which they did sell, or offer to sell pipe for in that portion of the country not covered by their combination.

Affiant further states that the freight rate to St. Louis from Bessemer, Ala., on cast-iron pipe during the year 1895, and up to May 2, 1896, was about \$3 per ton.

Affiant files, as Exhibit "B" to this affidavit correct copies of the following documents taken from the originals in the possession of the Chattanooga foundry and pipe works: Telegram and letter dated Cincinnati, Ohio, respectively December 31, 1894, and January 2, 1895, addressed to M. Llewellyn, chairman, and signed by B. F.

72 Houghton; telegram and letter written or dictated by M. Llewellyn to each of the corporations and firms named above, notifying them of the fact that the Addyston Pipe & Steel Co. agreed to enter into this combination. The telegram and letter were dictated by M. Llewellyn, chairman of the Associated pipe works, and who was also secretary and treasurer of the Chattanooga foundry & pipe works, and both were sent to parties intended. Copies of these were kept by the Chattanooga foundry & pipe works, or M. Llewellyn, chairman; letter dated Bessemer, Ala., January 24, 1896, and addressed to the several members of the Associated pipe works, which was received by Chattanooga foundry & pipe works. This letter is signed by B. F. Nichols who was at that time vice-president of the Howard-Harrison Iron Co. A statement showing shipments of pipe and castings to the city of St. Louis under the combination or agreement existing between the members of the Associated pipe works, which said statement is taken from the reports of John W. Thornton, auditor of Associated pipe works, the original of which reports was in the possession of the Chattanooga foundry & pipe works; telegram sent by Chattanooga foundry & pipe works to members of Associated pipe works, dated Chattanooga, April 29, 1895, and signed Chattanooga foundry & pipe works; letter dated December 23, 1895, at Bessemer, Ala., signed by F. B. Nichols, and addressed to E. B. Thomasson, which said letter has reference to the meeting on Lookout mountain heretofore set forth in this affidavit, and the same bears the genuine signature of F. B.

Nichols; pencil writing on Lookout Inn letter-head, which is the handwriting of J. W. Thornton, auditor of the Associated pipe works.

Affiant files as Exhibit "C" to this affidavit, correct copies of the following documents taken from the originals in the possession of the Chattanooga foundry & pipe works; a letter dictated by E. B. Thomasson, for the Chattanooga foundry & pipe works, and addressed to J. K. Dimmick, vice-president of the Anniston Pipe & Foundry Co., dated Chattanooga, February 15, 1896, which was signed "Chattanooga foundry & pipe works, by E. B. Thomasson," which said letter was written and mailed by this affiant; also copy of letter to same address, signed, written and mailed same way, dated Chattanooga, Tenn., February 26, 1896, a copy of which was retained by Chattanooga foundry & pipe works. Also letter dictated by E. B. Thomasson written and mailed by affiant, and signed "Chattanooga foundry & pipe works, by E. B. Thomasson," dated Chattanooga, Tenn., February 17, 1896, and addressed to Park

73 Woodward, supt., Atlanta water works, Atlanta, Ga., a copy of which letter was retained by Chattanooga foundry & pipe works. Also letter dictated by M. Llewellyn, written and mailed by affiant, dated February 21, 1896, and addressed to Anniston Pipe & Foundry Co., Anniston, Ala., a copy of which was retained by the Chattanooga foundry & pipe works; same was signed "Chattanooga foundry & pipe works, by M. Llewellyn, secretary." Telegram received by Chattanooga foundry & pipe works from Anniston Pipe & Foundry Co., dated Feb'y 21, 1896, which telegram was in possession of Chattanooga foundry and pipe works; letter written by R. L. Varner, the representative whom Anniston Pipe & Foundry Co. sent to Atlanta, the same being the report of said Varner that he was directed to make by said Anniston Pipe & Foundry Co. It is addressed to the latter and dated February 24, 1896. A copy of this letter or report was furnished Chattanooga foundry & pipe works; letter sent out by Anniston Pipe & Foundry Co. to the members of said Associated pipe works, telling them what price to protect for job in Atlanta. This letter was dated February 15, 1896, and signed by J. K. Dimmick, vice-president; also copy of letter, dated Anniston, Ala., February 24, 1896, and addressed to B. F. Nichols, vice-president Howard-Harrison Iron Co., Bessemer, Ala., signed "Vice-president," J. K. Dimmick being such officer. A copy of this letter was furnished Chattanooga foundry & pipe works; letter dated Chattanooga, Tenn., February 25, 1896, and addressed to each member of the Associated pipe works, and signed "Chattanooga foundry & pipe works, by E. B. Thomasson." This letter was dictated by said Thomasson, and written by affiant, and a copy of the same was mailed by affiant to each member of said Associated pipe works, and a copy of same was retained by Chattanooga foundry & pipe works.

Affiant files as Exhibit "D" to this affidavit, correct copies of the following documents taken from the originals in the possession of Chattanooga foundry & pipe works; letters and telegram showing prices quoted by Chattanooga foundry & pipe works for cast-iron

pipe and special castings in territory where the combination between the members of the Associated pipe works did not exist; also freight rates from Chattanooga to such territory and which is called in the minutes "free territory."

Affiant files as Exhibits "E," "F," "G" and "H" to this affidavit correct copies of the following documents taken from the originals in the possession of the Chattanooga foundry & pipe works; 74 as Exhibit "E," letter dated Cincinnati, Ohio, December 28, 1895, addressed to M. Llewellyn, chairman, and signed by B. F. Houghton, V. P., which said original letter was in the possession of M. Llewellyn. Letter dictated by M. Llewellyn, written and mailed by affiant, dated February 20, 1896, and addressed to John W. Harrison, president Howard-Harrison Iron Co., Bessemer, Ala.; letter written by E. B. Thomasson, dated Chattanooga, Tenn., January 2, 1896, and addressed to W. H. Flint, Cincinnati, Ohio, said Flint being at that date the representative of said Chattanooga foundry & pipe works in the executive committee that managed the "auction pool" and fixed the prices at which pipe should be furnished. This letter was dictated by said Thomasson for Chattanooga foundry & pipe works, and written and mailed by affiant, a copy of which letter was retained by Chattanooga foundry & pipe works.

As "Exhibit F," fifteen letters and telegrams sent to the various parties named, which are in the handwriting of M. Llewellyn, secretary and treasurer of Chattanooga foundry & pipe works.

As Exhibit "G," six copies of general statement taken from copies made by J. W. Thornton, auditor, showing remittances and amount due from one to the other by the members of the Associated pipe works on the division of the bonuses received by them; also copies of two other letters addressed to Howard-Harrison Iron Co., and signed "Chattanooga foundry & pipe works, by M. Llewellyn, secretary," dated respectively April 15, 1896, and April 28, 1896, acknowledging receipt of bonuses. Also copies of three other letters signed by M. Llewellyn, chairman; three letters written and sent by Chattanooga foundry & pipe works to Howard Harrison Iron Co., at Bessemer, Ala., acknowledging receipt of bonuses, which said letters were dated respectively February 13, 1896, March 17, 1896, and March 30, 1896; letter written by M. Llewellyn, chairman, to each member of Associated pipe works, notifying them of draft made to pay expenses. This letter is dated January 31, 1896.

As Exhibit "H," letter dated South Pittsburg, Tenn., April 13, 1896, addressed to J. G. Miller, Chicago, and signed by South Pittsburg pipe works. Said Miller was the representative of South Pittsburg works in the auction pool; letter dated Chattanooga, Tenn., April 15, 1896, addressed to W. H. Flint, Chicago, signed "Chattanooga foundry & pipe works by E. B. Thomasson;" letter dated Chattanooga, Tenn., April 28, 1896, addressed to South Pittsburg pipe works, signed "Chattanooga foundry & pipe works, by

75 E. B. Thomasson;" letter dated South Pittsburg, Tenn., April 29, 1896, addressed to Chattanooga foundry & pipe works, signed by C. W. Harrison, vice-president, he being at that time vice-president of South Pittsburg pipe works; letter dated

Chattanooga, Tenn., April 29, 1896, addressed to Elias L. Bierbower, receiver American Water Works Co., Omaha, Neb., and signed "Chattanooga foundry & pipe works, by E. B. Thomasson." The said Chattanooga foundry & pipe works kept letter-press copies of the foregoing letters, each of which were signed and sent by it, and the originals received by it are or were in its possession.

Affiant was present at the meetings of Dec. 28, 1894, and Dec. 19 and 20, 1895, and assisted in reporting these meetings as before stated, and he knows that his reports of said meetings correctly set forth what took place at the respective meetings.

(Signed)

J. E. McCLURE.

Sworn to and subscribed before me this 20th day of January, 1897.

[SEAL.]

F. X. RANSELL,  
Notary Public.

#### EXHIBIT "A."

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

I herewith submit an exact copy of the minutes of meeting of December 28, 1894, which was written by myself.

" Meeting Southern Associated pipe works at their office, No. 8 Bates block, Chattanooga, Tenn., December 28, 1894.

Meeting called to order by Chairman Downing, at 11 a. m.

Present: F. B. Nichols, J. K. Dimmick, George E. Downing, M. Llewellyn, E. B. Thomasson; George E. Downing, chairman; J. W. Thornton, acting secretary.

The question of admitting Louisville and Cincinnati shops into the Southern Association was taken up and after a full discussion the following resolution was offered by J. K. Dimmick: 'Resolved that the proposition as offered by Mr. F. B. Nichols be adopted.'

#### Proposition of F. B. Nichols.

First. The bonuses on the first 90,000 tons of pipe secured in any territory 16" and smaller sizes shall be divided equally among six shops.

Second. The bonuses in the next 75,000 tons 30" and smaller sizes to be divided among five shops, South Pittsburg not participating.

Third. The bonuses on the next 40,000 tons 36" and smaller sizes to be divided among four shops Anniston and South Pittsburg not participating.

Fourth. The bonuses on the next 15,000 tons consisting of all sizes of pipe shall be divided among three shops, Chattanooga, Anniston and South Pittsburg not participating. The above division is based on the following tonnage of capacity:

South Pittsburg. ....	15,000 tons.
Anniston.....	30,000 "
Chattanooga.....	40,000 "
Bessemer.....	45,000 "
Louisville.....	45,000 "
Cincinnati.....	45,000 "

When the 220,000 tons have been made and shipped and the bonuses divided as hereafter provided, the auditor shall set aside into a 'reserve fund' all bonuses arising from the excess of shipments over 220,000 tons and shall divide the same at the end of the year among the respective companies according to the percentage of the excess of tonnage they may have shipped (of the sizes made by them) either in pay or free territory. The above proposition is intended to include all ordinary pipe specials in the tonnage named. It is also the intention of this proposition that the bonuses on all pipe larger than 36 in. in diameter shall be divided equally between the Addyston Pipe & Steel Company, Dennis Long & Company and the Howard-Harrison Iron Company. Pending the discussion of Mr. Dimmick's motion, the meeting adjourned at 2 p. m. for dinner.

The meeting was called to order by the chairman at 3 p. m. Messrs. Long and Callahan, representing the Louisville shop, and Haughton and Davis, representing the Cincinnati shop, were present.

The chairman of the meeting stated that the object of the meeting was to determine whether the Louisville and Cincinnati shops would be willing to become members of the association. He went over the ground and dwelt on the advantages that would result from an association as it could be conducted by the six shops and also presented the disadvantages of working separately, the cutting of prices and other disastrous consequences that had resulted in the past from disorganization, jealousy and rivalry in business.

He explained some of the workings of the Southern Association and set forth some of the advantages resulting from a thorough knowledge on the part of each member of the Southern Association of the business situation in the territory in which the association had operated during the past year.

The resolution of J. K. Dimmick, providing for the passage of the proposition submitted by Mr. Nichols (F. B. Nichols), was voted upon and all companies voted 'Aye,' the Cincinnati representatives, however, reserving the privilege of submitting the proposition as voted upon to the directors of their company for their approval.

Memorandum of agreement upon proposition of F. B. Nichols, which has already been agreed upon by the undersigned this the 28th day of December, 1894.

First. Resolved, that this agreement shall last for two years from the date of the signing of same, until December 31st, 1896.

Second. On any question coming before the association requiring a vote, it shall take five affirmative votes thereon to carry said

question, each member of this association being entitled to but one vote.

Third. The Addyston Pipe & Steel Company shall handle the business of the gas and water companies of Cincinnati, Ohio, Covington and Newport, Ky., and pay the bonus hereafter mentioned, and the balance of the parties to this agreement shall bid on such work such reasonable prices as they shall dictate.

Fourth. Dennis Long & Company of Louisville, Ky., shall handle Louisville, Ky., Jeffersonville, Ind., and New Albany, Ind., furnishing all the pipe for gas and water works in above-named cities.

Fifth. The Anniston Pipe & Foundry Company shall handle Anniston, Ala., and Atlanta, Ga., furnishing all pipe for gas and water companies in above-named cities.

Sixth. The Chattanooga foundry & pipe works shall handle Chattanooga, Tenn., and New Orleans, Louisiana, furnishing all gas and water pipe in the above-named cities.

Seventh. The Howard-Harrison Iron Company shall handle Bessemer and Birmingham, Ala., and St. Louis, Mo., furnishing all pipe for gas and water companies in the above-named cities; extra bonus to be put on East St. Louis and Madison, Ill., so as to protect the prices named for St. Louis, Mo.

Eighth. South Pittsburg pipe works shall handle Omaha, Neb., on all sizes required by that city during the year of 1895, conferring with the other companies and co-operating with them; thereafter they shall handle the gas and water companies of Omaha, Neb., on such sizes as they make.

78 NOTE.—It is understood that all the shops who are members of this association shall handle the business of the gas and water companies of the cities set apart for them including all sizes of pipe made by them.

The following bonuses were adopted for the different States as named below: All railroad or culvert pipe or pipe for any drainage or sewerage purpose on 12" and larger sizes shipped into bonus territory shall pay a bonus of \$1.00 per ton. On all sizes below 12" and shipped into 'bonus territory' for the purposes above named, there shall be a bonus of \$2.00 per ton.

*List of Bonuses.*

Alabama .....	\$3 00	S. D. ....	\$2 00	Ky. ....	\$2 00
B'gham, Ala. ....	2 00	Florida .....	1 00	La. ....	3 00
Anniston, Ala. ....	2 00	Georgia .....	2 00	Miss. ....	4 00
Mobile, Ala. ....	1 00	Atlanta, Ga. ....	2 00	Mo. ....	2 00
Arizona Ter. ....	3 00	Ga. coast p'ts. ....	1 00	Montana .....	3 00
California .....	1 00	Idaho. ....	2 00	Nebraska. ....	3 00
Colorado .....	2 00	Nev. ....	3 00	N. Mex. ....	3 00
Ind. Ter. ....	3 00	Oklahoma .....	3 00	S. C. ....	1 00
North C. ....	1 00	Wis. ....	2 00	Minn. ....	2 00
Tenn., east of C'-land. ....	2 00	Texas, interior. ....	3 00		
Tenn., middle and west .....	3 00	Texas coast. ....	1 00		
Illinois, except Madison and East St. Louis, as previously provided. ....					2 00
Wyoming .....	4 00	Wash'ton Ter. ....	1 00	Utah. ....	4 00
Oregon .....	1 00	Michigan. ....	1 50	Indiana .....	2 00
Ohio .....	1 50	West Va. ....	1 00	Iowa. ....	2 00
N. D. ....	2 00	Kansas. ....	2 00		

All other territory free.



On motion of Mr. Llewellyn, the bonuses on all city work as specially reserved, shall be 2.00 per ton.

It is agreed in the first place that every order shall be reported daily, whether from free territory or bonus territory, giving consignee and destination.

Reports of shipments shall be made on the 1st and 16th of each month for the preceding half month's shipments, and the auditor is hereby authorized to draw on each company at sight for their debit balances for the time reported.

Resolved, That every member of this association be required to file with the auditor a report of all orders on their books at the date that this association goes into effect, and that the report shall be final and binding, and only such orders shall be exempted from bonus payment in pay territory; further, as soon as it is

79 ascertained that all have agreed to come into this association, that they at once notify the parties to whom they have made quotations, withdrawing the same at once, and no orders are to be accepted on quotations previous to entering this agreement by the parties hereto, unless they are willing to pay the 'bonuses' established.

The following resolution was offered by W. L. Davis:

Resolved, at any meeting of this association at any time any member having grievances against any buyer for default of payment or other grounds complaint may be submitted at a meeting and asked the co-operation of the other members in such a manner as may be decided upon to compel the adjustment of said grievance, either by refusing to quote the party in default on pipe, or such other means as the association may agree upon; or the party aggrieved shall at once report the complaint to the auditor, who shall make carbon copies and send one to each member of the association.

Agreed that all quotations after this date forward shall be made with a view of paying bonuses fixed this date until further advised.

Following resolution was offered by F. B. Nichols:

Resolved, That Mr. Llewellyn be made acting chairman under this agreement, until he has relief, and that in the event that the Addyston Pipe & Steel Company conclude at their board of directors' meeting to confirm the action of their representatives, Messrs. Haughton and Davis, at meeting today, that they wire Mr. Llewellyn, and that he, on receipt, wire each of the other parties hereto, and that the agreement shall then immediately go into effect and become binding on all parties.

Resolved, That the acting secretary mail copy of these minutes to each party hereto on tomorrow, December 29th, 1895.

The following resolution was offered by F. B. Nichols:

Resolved, That in the event this association is entered into, that the Howard-Harrison Iron Company release each and every party from their obligation in reference to Minneapolis letting January 7th, 1895; in the event that the agreement is not entered into, the Howard-Harrison Iron Company are still to endeavor to handle

under agreement entered into at Chicago and subsequently changed at Minneapolis."

In pursuance to this agreement the following by-laws were adopted:

"At a meeting of the Associated pipe works, 8 Bates block, Chattanooga, Tenn., January 23rd, 1895, the following by-laws were adopted:

80 First. This association shall last two years from January 1st, 1895, and shall have an executive committee, consisting of a member of each company.

Second. The officers of this association shall be:

SEC. 1ST. A chairman, who shall preside at all meetings and call special meetings when he may deem it advisable and have general supervision of the affairs of the association.

SEC. 2D. An auditor who shall have an office at Chattanooga and shall keep the records of the association and perform the duties of secretary, in the absence of a regularly appointed secretary; make such reports and statements as may be hereinafter provided; checking the books and accounts of the several shops who are members of this association and perform such other duties as may be hereinafter assigned to him.

SEC. 3D. An assistant to the auditor who shall perform duties of the auditor during his absence from the office of the association and assist him regularly in all the duties of the office.

Third. SEC. 1ST. Each shop shall report daily to the auditor all orders secured in bonus or free territory, giving the shop number of same, number of pieces of each size and the weight per piece or such part of both as can be given from the nature of the order.

#### SEC. 2D.

On the 1st and 16th of each month they shall report to the auditor all shipments made in all territory, giving shop number, destination, and sizes of each shipment and a summary in tons or pounds; showing the amount of bonus and tonnage, of the bonus as well as free territory.

#### SEC. 4TH.

The auditor shall make carbon copies daily of all reports received and send one to each shop, and to such others as may be designated.

SEC. 2D. He shall keep such records and accounts as will enable him to exhibit at all times the exact status of the affairs of the association.

SEC. 3RD. He shall on the 1st and 16th of each month, or as soon as practicable, send to each shop a statement of all shipments reported in the previous half months, with a balance-sheet  
81 showing the total amount of the premiums on shipments, the division of the same, and a debit-credit balance of each company; also a statement of free orders secured during the same

period; and a memorandum of balance payable from one to another.

#### SECTION 1ST.

5th. The auditor shall once each month thoroughly check the books of each company in such manner as may be necessary to determine the fact that all orders secured and shipments made, the bonuses paid into the association, have been properly made and performed by each member of the association, and shall make a monthly report to all of the parties of the association, of the results of the checking of the books of each company; and shall be authorized to charge and credit each company in such a manner as may be necessary to make the books and records correct, according to the basis of the agreement entered into December 28th, 1894, and further amended and perfected this date.

On motion letter of Mr. C. W. Harrison's in regard to Chadwick and Tolona, Ills., reported by Cincinnati was referred to Mr. B. F. Haughton, V. P., for explanation.

Moved by Mr. Dimmick that Major Downing and C. W. Harrison, agent, be requested to withdraw all quotations on Lincoln, Nebraska, and that if the order is taken the new 'bonus' be paid.

Adopted.

Messrs. Dennis Long & Co. reported Minneapolis bids were received January 7th, and rejected; the committee authorized to purchase pipe in the open market without advertisement.

The following resolution was adopted: Whoever has a representative at any public letting shall instruct him to send to the auditor a full list of the bids and bidders on same; also that all information in regard to work taken in pay territory by the shops outside of this association shall be reported to the auditor, who shall keep a proper record of such information and send carbon copies of same to all of the members of this association.

It was agreed that the six members of this association divide the expenses of the Chattanooga office share and share alike.

On motion adjourned."

Below is a copy of minutes of May 16th, 1895:

" Meeting Associated pipe works at Galt house, Louisville, Ky., May 16th, 1895.

82 Present: A. F. Callahan, W. L. Davis, B. F. Haughton, J. W. Harrison, C. W. Harrison and M. Llewellyn.

Meeting called to order by Chairman Llewellyn at 9.45 a. m., J. W. Thornton, acting secretary. Minutes of previous meeting were read and approved.

On motion of A. F. Callahan it was decided to proceed with the regular business of the association with the understanding that same would be submitted to the representative from Anniston when he arrived for approval.

On motion of A. F. Callahan, the explanation of the Addyston Pipe & Steel Company in reference to Brightwood, Ind., was ac-

cepted and bonus of two dollars as originally reported by them confirmed.

On motion the bonus for Dayton, Ohio, as reported by Cincinnati was fixed at three dollars for the first two hundred tons, and two dollars for the balance of the tonnage to make up the year's supply.

On motion of B. F. Haughton, the bonus on Port Clinton, Ohio, as reported by Cincinnati was fixed at two dollars instead of \$1.50 as previously reported.

On motion it was declared that it was the sense of the association that whenever an order is reported by any shop, and a doubt exists as to the proper bonus to be paid, that it be reported with the facts in the case, to be acted upon at the next meeting of the executive committee.

On motion it was resolved, that any party to this agreement having reported a *bona fide* time contract upon which bonus is to be paid, shall be entitled to the protections of the other members of the association.

The Addyston Pipe & Steel Company reported a contract with the Big Four railroad for all the culvert pipe to be used by them during the year 1895, and the same is subject to bonus.

At 4 p. m. meeting was called to order again; H. B. Cooper, and P. McArthur, from Anniston and Bessemer, respectively, were present. The minutes of the morning meeting were read to H. B. Cooper and received his approval.

On motion the additional 25 cents per ton specified by Anniston for Shelby, Mich., be charged at \$1.50 bonus and other additional orders be paid for at current bonus in force at the time that such orders are reported.

The following resolution was offered by John W. Harrison :

"Whereas, the system now in operation in this association of having a "fixed bonus on the several States" has not in its operation resulted in the advancement in the prices of pipe as was anticipated, except in "reserved cities" and some further action is im-

83 peratively necessary in order to accomplish the ends for which this association was formed. Therefore, be it resolved, That from and after the first day of June that all competition on the pipe lettings shall take place among the various pipe shops prior to the said letting. To accomplish this purpose it is proposed that the six competitive shops have a "representative board" located at some central city to whom all enquiries for pipe shall be referred, and said board shall fix the price at which said pipe shall be sold, and bids taken from the respective shops for the privilege of handling the order, and the party securing the order shall have the protection of all the other shops. Should it be deemed best for the interest of this association to eliminate the southern territory from the control of "the general pool" and refer all lettings in said territory to the southern shops for their exclusive action, upon the agreement of the four southern shops to pay this association the fixed bonus now in force on said Southern States, said southern shops to have the option of doing so.

All division of bonuses to remain as now established during the year 1895.

It was moved by Mr. Callahan, that the resolution of Mr. John W. Harrison, be referred to a committee of the whole to be definitely acted upon at a meeting to be held at the Galt house, Louisville, Ky., May 23d, 2 p. m. Carried.

On motion meeting adjourned."

"Called meeting of the Associated pipe works at Galt house, Louisville, Ky., May 27, 1895.

Present: M. Llewellyn, A. F. Callahan, J. K. Dimmick, H. B. Cooper, B. F. Haughton, W. L. Davis, C. W. Harrison, E. B. Thomasson; M. Llewellyn, chairman; J. W. Thornton, acting secretary.

After an informal discussion of the resolution offered by John W. Harrison, at Louisville, Ky., May 16, '95, it was decided to postpone definite action until the arrival of Mr. Harrison at 2.20 p. m.

At 9 p. m. meeting was called to order by Mr. M. Llewellyn, chairman, John W. Harrison being present as well as members who were present previous to the adjournment at 4.20 p. m. The secretary was instructed to read resolutions of John W. Harrison, as shown in the minutes of May 16th, which was done.

Upon being properly moved and seconded, the resolution of John W. Harrison was adopted as read.

The southern shops thereon elected to throw all work into a 'general pool.'

On motion the central office was fixed at Cincinnati, Ohio, 84 dating from June 1, 1895. On motion of A. F. Callahan, it was resolved, that when an inquiry is reported to which a member can properly establish a claim as a special customer, such inquiry should not be disposed of by the 'auction basis' but shall be handled by such member, the committee fixing the price and bonus, such price and bonus to be commensurate with prices and bonuses at the time such inquiry shall be reported. On motion of A. F. Callahan, it was agreed that the question of a continuation of this association beyond December 31, 1896, shall be taken up and decided by the association between the 1st and 15th of July, 1896.

On motion B. F. Haughton and D. R. P. Dimmick were appointed to secure offices in Cincinnati, Ohio.

On motion the question of auditor's assistant, salaries, etc., was left to a representative committee from the various shops.

On motion of W. L. Davis, it was agreed that all parties to this association having quotations out shall notify their customers that the same will be withdrawn by June 1, 1895, if not previously accepted, and upon all business accepted on or after June 1st, bonuses shall be fixed by the committee.

On motion meeting adjourned."

Below is copy of minutes December 19 and 20, 1895:

"LOOKOUT MOUNTAIN, TENNESSEE, Dec. 19 and 20, 1895.

*Minutes.*

Meeting of the Associated pipe works at 'Lookout inn,' Lookout mountain, Tennessee.

Present: F. B. Nichols, A. F. Callahan, M. J. Boots, J. M. Dudley, W. L. Davis, C. W. Gray, D. L. Miller, C. W. Harrison, B. F. Haughton, J. R. Rice, M. Llewellyn, D. Giles, W. H. Flint, J. G. Miller, E. B. Thomasson, J. K. Dimmick, D. R. P. Dimmick and F. C. Miller.

Meeting was called to order by M. Llewellyn, acting secretary.

Minutes of the previous meeting were read and approved.

Res. 1. A. F. Callahan moved that upon all inquiries for prices from 'reserved cities' for pipe required during the year of 1896, that prices and bonus shall be fixed at a regular or called meeting of the principals.

(This dictated by W. L. Davis.)

Seconded by J. K. Dimmick. Carried.

Res. 2. A. F. Callahan moved that the bonus or pipe supplied by the Addyston Pipe & Steel Co., for the village of Westwood  
85 under contract of last summer, that the bonus be corrected to two dollars, and that the bonus on the Riverside contract, letting December 14th, be fixed at two dollars.

Seconded by W. L. Davis. Carried.

The following is a memorandum of F. B. Nichols, relative to matters which he desires to discuss at meeting to be held at Cincinnati, January 10, 1896:

1st. We, the Howard-Harrison Iron Co., would like to have the headquarters moved from Cincinnati to the city of Chicago, owing to the fact that statement of our business proves that one-quarter of our total tonnage is sold in the State of Illinois, and probably 25 per cent. more of the total output is bought in and around the city of Chicago, and we therefore deem it of the utmost importance that the headquarters be situated at a point where we come in direct competition with the bulk of our trade and our chief competitors.

2d. We want the 'bonus' for 'reserved city' work to be adjusted upon an equitable basis for all.

3d. We want our agreement changed to the following extent: Instead of the first 90,000 tons secured and shipped, we want it to read that the first 90,000 tons shipped into pay territory shall be divided equally, the other divisions to be in accordance with the basis for dividing 90,000 tons.

4th. We want to vote to correct any inequalities for '96 that may have existed in '95.

5th. We want our agreement in all other respects to stand as was first written up.

Upon motion meeting adjourned at 6.30 p. m. to meet at the same place tomorrow, at 10 a. m."



" DECEMBER 20TH, 1895.

Meeting was called to order by M. Llewellyn, chairman, at 11 a. m. All being present who participated in the meeting of the 19th, with the exception of Messrs. D. L. Miller and J. R. Rice.

Res. 3. F. B. Nichols moved that Dennis Long & Company be allowed to close contract for the year of 1896, with the Louisville Water Company at the best price they can obtain for same, and after securing contract refer the same to the meeting of the principals to fix bonus.

Seconded by A. F. Callahan. Carried.

Res. 4. B. F. Houghton moved the bonus on the Ill. Central order be put back to five dollars.

Seconded by J. K. Dimmick. Carried.

86 Res. 5. A. F. Callahan moved that the scale of prices as shown by card dated August 15th be adopted as a guide to committee on fixing prices until otherwise decided.

Seconded by F. B. Nichols. Carried.

Res. 6. F. B. Nichols moved that the agreement shall be changed to read: That the first 90,000 tons shipped into pay territory is to be divided equally by all six shops and the rest of the agreement to be changed accordingly, taking effect after January 1st, 1896, as follows:

1st. On the first 90,000 tons of pipe shipped into 'pay territory' 16" and smaller sizes shall be divided among the six shops.

2. The bonuses on the next 75,000 tons 30" and smaller sizes shipped into pay territory shall be divided among five shops, South Pittsburg not participating.

3rd. The bonuses on the next 40,000 tons shipped into pay territory 36" and smaller sizes to be divided among four shops, Anniston and South Pittsburg not participating.

4th. The bonuses on the next 15,000 tons shipped into pay territory, consisting of all sizes of pipe shipped shall be divided among three shops, Chattanooga, Anniston and South Pittsburg not participating.

The above division is based upon the following tonnage of capacity:

South Pittsburg.....	15,000 tons.
Anniston.....	30,000 tons.
Chattanooga....	40,000 tons.
Bessemer.....	45,000 tons.
Louisville.....	45,000 tons.
Cincinnati: .....	45,000 tons.

When the 220,000 tons has been shipped into pay territory and the bonus divided as provided above, the auditor shall set aside into a 'reserve fund' all bonuses arising from excess of shipments over 220,000 tons and shall divide the same at the end of the year among the respective companies according to the percentage of excess of the tonnage they may have shipped of the sizes made by them either into pay or free territory. Upon calling the role of the above-

named companies to vote on the above resolution, they voted as follows:

Bessemer, aye.

Chattanooga, aye.

Anniston, aye.

Cincinnati, (not prepared to vote.)

South Pittsburg, (aye.)

87 Louisville, aye.

Upon motion meeting adjourned for lunch at 3 p. m.

Called to order again at 3.40 p. m.

Res. 8. W. L. Davis moved to sell the 519 pieces of 20" pipe for Omaha, Neb., for \$23.40 delivered.

Seconded by D. R. P. Dimmick. Carried.

Res. 9. F. B. Nichols moved that Anniston participate in this bonus and the job be sold over the table.

Seconded by W. L. Davis. Carried.

Pursuant to the motion the 519 pieces of 20" pipe for Omaha was sold to Bessemer at a premium of \$8 (J. W. T.)

Res. 10. J. K. Dimmick moved that the next meeting be held at Cincinnati, January 10th, '96.

Seconded by F. B. Nichols. Carried.

Res. 11. B. F. Haughton offered the following resolution: Resolved That the visiting members of this association extend a vote of thanks to the Chattna. fdy. & pipe works for so royally entertaining them. Carried.

Res. 12. Upon motion A. F. Callahan and seconded by M. Llewellyn, chairman, meeting adjourned at 4.20 p. m."

I wish to submit also a copy of the minutes of Feb'y 14th, 1896:

"CINCINNATI, OHIO, Feb'y 14th, 1896.

Meeting of the principals of the Associated pipe works at the office of the Addyston Pipe & Steel Company, Cincinnati, Ohio, Feb'y 14th, 1896.

Present: F. C. Miller, D. R. P. Dimmick, M. Llewellyn, J. G. Miller, C. W. Harrison, F. A. Kebler, W. H. Flint, E. B. Thomasson, W. L. Davis, John W. Harrison, A. F. Callahan, B. F. Haughton, C. W. Gray, J. M. Dudley and M. J. Boots. M. Llewellyn, chairman and J. W. Thornton, sec'y.

The meeting was called to order at 10.30 a. m. The minutes of the previous meeting- held on January 10th and January 27th, respectively were read and approved excepting the reference to Indianapolis, Ind. In minutes of January 27th, which was amended to read Indianapolis Water Company.

Mr. W. L. Davis made a report on the letting at Toledo, Ohio, in which he stated that the gentleman who represented this association at Toledo, Ohio, put in a bid of \$18.85 on all sizes, provided that all of the work would be included in the bid. Mr. Davis also stated that the bids would be opened on Saturday, February 15th.

Mr. A. F. Callahan reported that the Detroit shop had taken an

order from Crane Company for a thousand tons of pipe for Los Angeles, Calif.

88 It was agreed on motion of W. L. Davis that Dennis Long & Co. having paid J. B. Clow & Sons 35 cents per ton in order to secure an order from A. T. & S. F. R. R. Co. of 1,500 tons, that the same be deducted from bonus fixed on that job. (Louisville shop No. 82.)

The bonus on sales memorandum 118 secured by Bessemer under their shop No. 54 was declared to be sold \$8.95 as originally fixed when the job was sold to Chattanooga on inquiry from W. L. Cameron, Kansas City, Mo.

On motion the bonus on Bessemer's order No. 52 for B'gh'm Gas Co. was fixed at \$5.00 the order being 66 tons from a 'reserved city' and larger than a small routine order. It was referred to the principals for action.

On motion the Addyston Pipe & Steel Co. were allowed to report orders overlooked in reporting order-on hand January 1st, viz: for Newport, Ky. and Bellefontaine Bridge & Iron Co. on basis of \$2.00 per ton.

On motion the following bonuses were fixed:

Chicago Gas Co., Geo. Knapp, 7,000 to 10,000 tons, year's requirement, prices \$22.00 for 6 and 8" and \$21.50 for larger sizes, and 2 cents for specials on cars Chicago, bonus fixed on same \$5.00.

Calumet Gas Co., Calumet, Ill., requirements for the year, not exceeding 1,500 tons, prices \$23.50 for 4" and \$22.00 for 6" and 8" and \$21.50 for larger sizes, and 2½ cents for specials, bonus fixed \$5.00.

Northwestern Gas Light & Coke Co., Evanston, Ill., requirements for the year not exceeding 1,500 tons, prices \$23.80 for 4" and \$23.30 for 6 and 8" and \$21.80 for 10 and 12" and 2½ cents for specials, bonus fixed \$5.

Louisville Water Co., Louisville, Ky., 700 pieces of 8", 2,500 pieces of 6" and 300 pieces of 4", price \$22.50 in water company's yard, drayage 35 cents per ton, bonus fixed on same \$6.50.

La Clede Gas Co., St. Louis, Mo., 3,248 tons, prices \$25.00 for 4", \$24.00 for 6, 8, 10 and 12" and \$22.75 for 16", 18" and 20", delivered on street; drayage about one dollar per ton, bonus fixed, \$5.65.

St. Louis Water Co., city of St. Louis, Mo., 2,800 tons, 35 tons 3", 100 tons 4", 1,200 tons 6" 'A', 300 tons 6" 'B', 1,200 tons 12" 'A', and 4 tons of 8" 'A' (2,839 T), prices \$24.00, switching and drayage 40 cents, bonus fixed on above \$6.50.

C. R. L. & P. R. R., Keokuk, Chicago, St. Joe delivery, Keokuk and Ch'go delivery, \$22.35, St. Joe delivery, \$24.00—contract for year's supply. Present specifications \$20.24, 36 and 42" about 702 tons, bonus fixed on the same \$7.50.

89 C. B. & Q. St. Louis delivery, \$21.00, year's supply. Bonus fixed on the above \$6.50.

Indianapolis Water Co., bonus fixed on the same, \$4.20. Above includes year's supply, about one thousand tons, price \$20.70.

On motion of A. F. Callahan, it was agreed on the dates of the Chicago letting at least five of the shops should be represented and

a majority of them should decide what bid should be made. The job to be regularly disposed of by the committee before the letting.

On motion of John W. Harrison, it was resolved, that all jobs sold previous to January 1st, 1896, by the committee that are not closed in 30 days from this date shall be canceled and resold, and in future no member buying a job shall be allowed longer than 60 days after the action of the committee in which to close the same, provided, however, that any member buying a job and holding it 60 days, upon written communication to the auditor, he may, upon the consent of the committee, have the time extended as may be deemed best in the judgment of the committee.

On motion it was agreed that the next meeting should be held at Cincinnati, on Friday, March 13th, 1896.

On motion the meeting adjourned.

J. W. THORNTON,  
*Acting Sec'y.*"

Copy.

Meeting of the Associated pipe works at office, 401 Temple court, Chicago, Ill., March 13th, 1896.

Present: M. Llewellyn, F. B. Nichols, M. J. Boots, W. L. Davis, A. F. Callahan, B. F. Haughton, C. W. Gray, D. R. P. Dimmick, F. G. Miller, J. K. Dimmick, J. G. Miller and W. H. Flint. M. Llewellyn, chairman; J. W. Thornton, acting secretary.

Meeting called to order at 10.40 a. m. The minutes of the previous meeting were read and approved, with the following exceptions:

The minutes were ordered corrected where the tonnage of the George O. Knapp contract was stated at 7,000 to 10,000 so as to read 5,000 to 7,000. On motion of W. L. Davis, it was agreed that if, in the judgment of Dennis Long & Company, they deemed it to be for the best interest of this association to reduce the price of pipe to the Chicago Gas Company 50 cents per ton, they be allowed to do so, and the "bonus" be reduced accordingly.

At 12.30, adjournment for 30 minutes.

The meeting was called to order against at 1.30 p. m.

90 Moved that "bonus" on Anniston's Atlanta water works contract be fixed at \$7.10, provided freight is \$1.60 a ton. Carried.

The following bonuses were fixed:

On Anniston's U. G. I. Co.'s orders for all destination as now reported, \$5.00; on all companies voting "Aye," except South Pittsburgh or the Omaha order, they voting "No" on that order.

The following motion was offered by W. L. Davis: "It having been demonstrated that sales memos. Nos. 107 and 118 are the same enquiry, the committee's action on 118 is hereby canceled and the 'bonus' on 107 reduced to \$6.55 to equalize the reduction of one dollar per ton made by Bessemer to meet the price made by Shickle-Harrison & Howard Iron Co." Carried.

On motion, the following firms were placed on the black list:

Campbell & Dennis, Joliet, Ill., acc't Bessemer. Challenge Wind Mill & Feed Mill Co., Batavia, Ill., acc't Anniston. J. H. Synon, Chicago, Ill., acc't of Addyston.

The next meeting fixed at Chicago, Friday April 10th, 1896.

On motion, meeting adjourned.

Dates of meetings and where held :

Chattanooga, Tenn., December 28th, 1894, No. 8 Bates block.

Chattanooga, Tenn., January 23rd, 1895, No. 8 Bates block.

Anniston, Ala., Feb'y 21st, 1895.

Cincinnati, Ohio, March 21st, 1895, office Addyston Pipe & Steel Company.

Louisville, Ky., May 16th, 1895, Galt house.

Louisville, Ky., May 27th, 1895, Galt house.

Cincinnati, Ohio, June 17th, 1895, 40 United Bank building.

Cincinnati, Ohio, July 18th, 1895, 40 United Bank building.

Cincinnati, Ohio, Aug. 30, 1895, Addyston Pipe & Steel Co.

Louisville, Ky., Sept. 19th, 1895, Galt house.

Atlanta, Ga., October 17th, 1895, Aragon hotel.

Birmingham, Ala., Nov. 21st, 1895, Morris hotel.

Lookout Mountain, Tenn., Dec. 19th and 20th, 1895, Lookout inn.

Cincinnati, Ohio, January 10th, 1896.

Cincinnati, Ohio, January 27th, 1896.

Cincinnati, Ohio, Feb'y 14th, 1896.

Chicago, March 13, 1896.

91

## EXHIBIT "B."

"CINCINNATI, OHIO, December 31st, 1894.

M. Llewellyn, chairman Chatta. Pipe & Fdy. Co., Chattanooga, Tenn.:

Directors have agreed to proposed plan; particulars will be mailed; you may notify other shops.

(Signed)

B. F. HAUGHTON."

Below is the letter referred to in the telegram, giving particulars:

"CINCINNATI, OHIO, January 2, 1895.

M. Llewellyn, chairman, Chattanooga, Tenn.

DEAR SIR: Late Monday afternoon I sent you the following dispatch: 'Directors have agreed to proposed plan. Particulars will be mailed; you can notify other shops.'

In discussing the question as to whether or not this agreement would work unfairly to any particular shop, both Mr. Davis and myself assured our directors that the plan was intended for the mutual benefit of all, and if at any time a member found that he was discriminated against that by presenting to the association evidence of the fact, his grievance would be considered and relief afforded. With this understanding our action was confirmed. I trust that the dispatch which you will send to the other shops announcing this acceptance will be in the nature of a pleasant New

Year's greeting. We understand that our action practically completes the agreement and that the new association is now a fact, and that all business taken from now on is to be considered as coming under its rules. Will you please advise me what date has been set on which a report shall be made concerning the orders now on hand?

(Signed)

B. F. HAUGHTON, V. P."

Below is a copy of telegram sent by M. Llewellyn, acting chairman, to all other members announcing Addyston Pipe & Steel Company's willingness to enter association:

"CHATTANOOGA, TENN., January 1, 1895.

C. W. Harrison, agent, 565 Rookery, Chicago, Ill.:

Dennis Long & Company, Louisville, Ky.

Maj. Geo. E. Downing, p't, South Pittsburg, Tenn.

F. B. Nichols, V. P., Bessemer, Ala.

92 J. K. Dimmick, V. P., Anniston, Ala.

The following message received last night from Cincinnati: 'Directors have agreed to proposed plan; particulars will be mailed, you may notify other shops, signed B. F. Haughton.'

(Signed)

M. LLEWELLYN, *Chairman*."

*Copy of Letter Written by M. Llewellyn, Chairman.*

"CHATTANOOGA, TENN., January 1, 1895.

Bessemer.

Cincinnati.

Louisville.

Anniston.

South Pittsburg.

Chattanooga.

GENTLEMEN: Receiving a message from Mr. B. F. Haughton, of the Addyston Pipe & Steel Company, last evening, I wired each of the other named companies this morning as follows:

'The following message received last night from Cincinnati: "Directors have agreed to proposed plan; particulars will be mailed; you may notify other shops, signed, B. F. Haughton."'

The action taken by the Addyston Pipe & Steel Co., at their meeting of their board of directors held yesterday determines the existence of an association of the six pipe works for the next two years, commencing January 1, 1895; since all the other pipe works have positively decided coming into an association at their meeting held in Chattanooga on Friday last, December 28, 1894. I congratulate you on your coming together and in having a definite understanding regarding prices on pipe, which I believe will prove of mutual interest to each pipe works concerned. Perhaps it is unnecessary to call your attention to any of the resolutions to the meeting held at Chattanooga on December 28, 1894; I have no doubt that every company represented at that meeting will endeavor



to comply with the same from beginning in every detail to insure the success of the association.

In order to get started properly at once would call your attention to resolution as follows:

'Resolved that every member of this association be required to file with the auditor a report of all orders on their books at the date that this association goes into effect, and that report shall be  
93 final and binding, and only such orders shall be exempt from bonus payments in "pay territory."'

Mr. J. W. Thornton, Bates block, is at present our auditor to whom you will report all orders on books up to present date (January 1st) at once. Again the clause that each company 'at once notify the parties to whom they have made quotations withdrawing the same at once.' I presume this has been done today upon receipt of message this morning. Our auditor requests that in reporting orders already secured, and also on those that will be reported daily in the future, that you give the number of pieces of each size of pipe, weight per piece, and tons both in free territory and pay territory. Books are being prepared for keeping records in this manner and it will insure greater accuracy if the orders are reported as above, so that the auditor may verify the tonnage before entering the same on the records of orders secured.

Also the auditor make the following request: The four companies who have previously belonged to the Southern Association shall report as early as possible all unfilled orders now on the books in all territory, as well as orders secured and shipments made in December, 1894. Perhaps attention should have been called at the last meeting as to the stock of pipe on hand in yards of the several companies or pipe works. I would suggest that each company procure an inventory of the stock of pipe on hand January 1st, and at the next meeting of the association each company can come prepared to report, provided it will be determined upon to take into consideration the stock of pipe on hand at the date of the organization of the association.

Very truly yours,

M. LLEWELLYN,  
*Acting Chairman."*

Copy.

BESSEMER, ALA., Jan'y 24, 1896.

Anniston Pipe & Fdy. Co.  
South Pittsburg pipe works.  
Chatta. fdy. & pipe works.  
Dennis Long & Company.  
Addyston Pipe & Steel Co.  
John W. Harrison, president.  
J. M. Dudley.

94 GENTLEMEN: Referring to the letting to take place at St. Louis, under date of Feb'y 4th, by the board of public improvements for furnishing and delivering in the city pipe yards about 2,865 tons of 3, 4, 6, 8 and 12" cast-iron pipe, deposit

\$1,865, and also for 150 tons of special castings depositor required \$225. I write to say that in view of the fact that I do not as yet know what the drayage will be on this pipe, I prefer that if any of you find it necessary to put in a bid without going to St. Louis, please bid not less than \$27.00 for the pipe, and two and three-quarters cents per pound for the specials. I would also like to know as to which of you would find it convenient to have a representative at the letting. It will be necessary to have two outside bidders.

Yours truly,  
(Signed)

F. B. NICHOLS, V. P.

Pipe shipped the city of St. Louis, Mo., during the year of 1895, by the Howard-Harrison Iron Co., of Bessemer, Ala. This being a close approximation and on which there is an overcharge bonus in the way of "bonus" of \$2.00 per ton. The figures given below are taken from report of our auditor as pipe being shipped by Bessemer on the following dates:

April 1st to 15th,	186 pcs. 36"	1089906 #.....	545 tons.
April 16th to 30th,	30 pcs. 30"	194310 #.....	97 "
	230 pcs. 36"	1352880 #.....	676 "
May 1st to 15th,	222 pcs. 30"	1203740 #.....	602 "
	39 pcs. 36"	228720 #.....	114 "
	7 specials, 36"	19970 #.....	9 "
May 16th to 31st,	234 pcs. 30"	1273795 #.....	630 "
	12 spls.,	44595 #.....	22 "
June 16th to 30th,	192 pcs. 30"	1041510 #.....	520 "
	21 spls., 30"	48841 #.....	24 "
July 1st to 15th,	114 pcs. 30"	622460 #.....	311 "
	12 spls., 30"	30631 #.....	15 "
July 16th to 31st,	180 pcs. 30"	972876 #.....	486 "
	11 spls.,	29020 #.....	15 "
August 1st to 15th,	120 pcs. 30"	646264 #.....	320 "
August 16th to 31st,	38 pcs. 6"	17680 #.....	9 "
	20 pcs. 12-in.	# 22120... ..	11 "
	12 spls.,	# 2177... ..	1 "
	150 pcs. 30"	800225 #.....	400 "
	12 spls., 30"	10777 #.....	5 "
Sept. 16th to 30th,	48 pcs. 30"	237730 #.....	120 "
October 1st to 15th,	210 pcs. 30"	1045310 #.....	5,120 "
95			
October 16th to 31st,	50 pcs. 4"	14205 #.....	7 "
	3,000 pcs. 6"	1319255 #.....	659 "
	501 pcs. 6"	136265 #.....	65 "
	40 pcs. 8"	27860 #.....	15 "
	100 pcs. 12"	105555 #.....	52 "
	372 pcs. 30"	1864330 #.....	930 "
	241 pcs. 20"	527355 #.....	210 "
Nov. 1st to 15th,	298 pcs. 20"	663605 #.....	330 "
	130 pcs. 30"	748870 #.....	374 "

## THE UNITED STATES.

Nov. 16th to 30th,	226 pcs. 20"	505060 #	250	"
	270 pcs. 30"	1342350 #	671	"
	68 pcs. 6"	31330 #	15	"
Dec. 1st to 15th,	534 pcs. 30"	2624680 #	1,312	"
	135 pcs. 20"	304615 #	150	"
	201 pcs. 20"	4528705 #	226	"
Dec. 16th to 31st,	23 pcs. 30"	102640 #	51	"
	178 pcs. 20"	392090 #	200	"

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 10,970 tons.

No. 2 order for city of St. Louis, Mo., as shipped by Howard-Harrison Iron Co., during 1895. The ton column is a rough estimate of the tonnage, I think the tonnage is near 11,000 tons shipped in 1895 to the city of St. Louis, Mo., by above firm; however, the city's books should show just how much pipe was received from the Howard-Harrison Iron Co. during 1895, and the city is entitled to \$2.00 per ton (being bonus charged for 1895 on reserved city work), or in round numbers, \$22,000.00, or a total "bonus" exacted from the city of St. Louis, Mo., under the agreement existing between said works of about \$40,284.50.

(See order below.)

City of St. Louis, water department, letting Feb'y 4th, 1896, Bessemer, Ala. (Howard-Harrison Iron Co.) secured this contract Feb'y 22nd, 1896, as per daily report of our auditor, Mr. J. W. Thornton, under date of Feb'y 24th, 1896, which gives the following quantities:

253 pcs. 3"	26 tons.
500 pcs. 4"	68 tons.
5,500 pcs. 6"	1,182 tons.
1,400 pcs. 6"	332 tons.
50 pcs. 8"	15 tons.
2,300 pcs. 12"	1,190 tons.

---

 2,813 tons.

96 J. W. Thornton's report of orders secured by Bessemer Feb'y 16th, to 29th, 1896, makes the exact tonnage—2,813 tons at bonus \$6.50. Amount of bonus on the job, \$18,284.50.

Minutes of Associated pipe works, dated Feb'y 14th, 1896, places approximate tonnage on this order, 2,839 tons. Therefore you will see that the official bonus to be charged on this one particular job is on record as to amount, \$18,284.50.

Now this pipe was shipped as follows:

Statement of shipments by Bessemer on the above orders, Feb'y 16th to 29th, 1896, as per auditor's report, gives:

642 pcs. 6" pipe 299215 #, bonus \$6.50.

March 1 to 15, 1896, 1,454 pcs. 6" 256230 # bonus \$6.50.

March 16 to 31, 554 pcs. 6" 237590 # bonus \$6.50.

March 16 to 31, 519 pcs. 12" 551450 # bonus \$6.50.

March 16 to 31, 763 pcs. 6" (no weight given) etc., etc.

(NOTE.—Shickle-Harrison & Howard Iron Co., filled part this order.)

APRIL 29TH, 1896.

To Dennis Long & Company, Louisville, Ky.:

Anniston Pipe & Foundry Co., Anniston, Ala.

South Pittsburg pipe works, South Pittsburg, Tenn.

Howard-Harrison Iron Co., Bessemer, Ala.

We will advance price Knoxville woolen mills dollar and half; please protect.

CHATTA. FDY. & PIPE WORKS.

BESSEMER, ALA., December 23rd, 1895.

Mr. E. B. Thomasson, Chattanooga, Tenn.

DEAR SIR: Please extend to Jimmy (I cannot recall his other name) my thanks for the very neat manner in which he got up the report of our last meeting.

I regret to advise you that the Boston specifications as yet have not been received.

Yours very truly,

F. B. NICHOLS.

LOOKOUT MOUNTAIN, TENN., Dec. 19, 1895.

Meeting Associated pipe w'ks at Lookout inn, Lookout Mountain, Tenn.

Present: F. B. Nichols, A. F. Callahan, M. J. Boots, J. M. Dudley, W. L. Davis, C. W. Gray, D. L. Miller, C. W. Harrison, B. F. Haughton, M. Llewellyn, J. R. Rice, D. Giles, W. H. Flint, J. G. Miller, E. B. Thomasson, J. K. Dimmick, D. R. P. Dimmick, and F. C. Miller.

The minutes of the previous meeting were read and approved.

Here insert res. 1 and other numbers consecutively.

Dec. 20th, '95.

Meeting called to order at 11 a. m., all being present who participated in meeting of 19th, excepting Mr. D. L. Miller and Mr. J. R. Rice.

Here insert resolutions by members, commencing with number 3.

EXHIBIT "C."

Copy.

CHATTANOOGA, TENN., Feb'y 15th, 1896.

Mr. J. K. Dimmick, V. P., Anniston, Ala.

DEAR SIR: We have the following inquiry from the Atlanta water works office approximately:

1,500 feet 12" pipe, also about 10,000 feet of pipe varying from 6 to 10 inches, with a lot of special castings. They state that they

are not prepared to give amount of different sizes, but will give order in good time after contract has been awarded. They ask for reply on or before the 18th instant, and you will therefore please advise us at once as to what price you desire us to protect on this contract.

Very truly yours,  
(Signed) CHATTA. FDY. & PIPE WORKS,  
By E. B. THOMASSON.

Copy.

ANNISTON, ALA., *Feb'y 15th*, 1896.

Chattanooga fdy. & pipe works.  
South Pittsburg pipe works.  
Howard-Harrison Iron Co.

GENTLEMEN: Please protect \$24.00 on approximately 375 tons of cast-iron pipe for the city of Atlanta, Ga., on which we are asked today for prices. We have sent a man over to Atlanta and will get as much more as possible.

Very truly yours,  
(Signed) J. K. DIMMICK, V. P.

98

Copy letter.

CHATTANOOGA, TENN., *Feb'y 17th*, 1896.

Mr. Park Woodard, supt. Atlanta water works, Atlanta, Ga.

DEAR SIR: We are in receipt of yours of the 14th instant, and in answer we propose to furnish you pipe at the following prices:

Approximately, 1,500 feet 12", 10,000 feet from 6 to 10" pipe for \$24.50 per ton of two thousand pounds and special castings for two and half cents per pound, all delivered on board cars Atlanta, Ga.

We have catalogues now in process of printing, and as soon as received we will take pleasure in mailing you copy. We can give you a prompt delivery on above pipe, and would be pleased to receive your order.

Very truly yours,

CHATTA. FDY. & PIPE WORKS,  
By E. B. THOMASSON.

Copy letter.

CHATTANOOGA, TENN., *Feb'y 21st*, 1896.

Anniston Pipe & Foundry Co., Anniston, Ala.

GENTLEMEN: We received the following letter under date of Feb'y 19th, 1896, from the Atlanta water works office:

"ATLANTA, GA., *Feb'y 19th*, 1896.

Chatta. fdy. & pipe works, Chatta., Tenn.:

Bids for pipe were opened at the meeting of board of water commissioners, this a. m., and as all bids were extremely high, it was moved and adopted that all bids be rejected. Will say that the

lowest bid was from R. D. Wood & Co., Philadelphia, Pa. Under such circumstances we would ask if it is not possible for a lower bid to be made from those who are so near this point, you might say, right at our door. Hoping to hear more favorably from you at an early date, we remain, with much respect,

Very truly yours,

(Signed)

W. B. TARBETT, *Sec'y.*"

99 We wired you promptly and we have your reply stating to stand pat on our price and that your representative goes there this evening. To all appearances you were not at this letting at Atlanta or I could not think that R. D. Wood & Co. would have been the lowest bidder, and yet it is quite a surprise to me that they rejected all bids received and still they act magnanimous when they ask if it is not possible for a lower bid to be made from those so near their very door. I regret very much that you have not posted us on this matter, for you no doubt knew the condition of affairs and I prefer receiving from you than from the Atlanta water w'ks, themselves.

Very truly yours,

CHATTA. FDY. & PIPE WORKS.

M. LLEWELLYN, *Sec'y.*

Copy telegram.

ANNISTON, ALA., *Feb'y 21st, 1896.*

Chatta. fdy. & pipe works, Chattanooga, Tenn.:

Stand pat on your price, our representative goes there this evening.

(Signed)

ANNISTON PIPE & FDY. CO.

Copy letter.

ANNISTON, ALA., *Feb'y 24th, 1896.*

Mr. F. B. Nichols, V. P., Bessemer, Ala.

DEAR SIR: Your letter of the 22d instant received, and we wired you this morning: "Atlanta job postponed until March 4th, have written you fully." In reply will say that we believe we made a mistake in trying to get \$24.00 for pipe and 2½ cents for specials, but there would have been no difficulty in this respect had we not run up against R. D. Wood & Co.'s man there putting in his bid for hydrants, and he also put in a bid for the pipe and specials at the last moment. Our representative called on the water company on Saturday the 22d, and found Wood & Company's man on the—they stated it was their belief that the four southern shops have an arrangement by which Anniston is to get the work, in other words that we had a combination between us, and if they can find it out positively they will never receive a bid from any of us again.

100 We think the best thing we can do is to have a representative from each of the four southern shops on the ground on March 4th, the date fixed for next letting, and dispose of the matter. In addition to asking for prices for the present lot of pipe, they will



ask for bids for the year's supply, consequently it is very important we all be on hand and take this matter up vigorously with them and see if we cannot satisfy them on the subject of the combine.

(Signed)

— — —, V. P.

NOTE.—J. K. Dimmick is vice-president Anniston w'ks.

McC.

Copy.

ANNISTON, ALA., *Feb'y 24th, 1896.*

Anniston Pipe & Fdy. Co., Anniston, Ala.

GENTLEMEN: As per instructions I went to Atlanta, Ga., on the 22d and have the following to report: I called at the water-works office early Saturday morning and found all city offices closed for the day, it being a legal holiday, and for an hour or more was unable to find any one connected with the water department. About 10 o'clock in the morning I found Mr. M. B. Torbett, sec'y of the water board, Mr. Howell Erwin, one of the water commissioners, and Mr. Wistar, of R. D. Wood & Company, and together we went to the water-works office, and were informed there that Col. Woodard, supt. of the water works was too unwell to come down to the office for the morning, so in company with the other two gentlemen we went to Col. Woodard's house where I learned the following from him: At a meeting of the city council last Monday a resolution was offered that the water commissioners be instructed to purchase from the Exposition Company all the 4 and 10" now in the ground at Piedmont park, paying them therefor the ruling market price, which I told them would be about \$24, and the Exposition Company to pay for the digging up and cleaning the pipe. The resolution passed council without a dissenting vote. At a meeting of the water board on Wednesday, the 19th instant, when the bids were opened, Mr. Wistar, of Wood & Company, submitted a bid attached to his bid for hydrants wanted by the board, attaching two bids for pipe, viz: for the 12" main and the additional 10,000 feet of 101 different sizes, a price of \$23 delivered f. o. b. cars Atlanta, Ga., and the other was for sufficient quantity 300 tons to allow them to send their own boat to Savannah, they bid a price of \$19.00 f. o. b. Savannah, I was unable to obtain the rate of freight from Savannah to Atlanta, all freight depots being closed for the day; the bids as submitted by the southern shops and that of R. D. Wood & Co. being so widely different, Col. Woodard advised the rejection of all bids. Inasmuch as he promised me when there last he would give us another chance in the event we were not the lowest bidders, at the same time he was instructed by the board to purchase the pipe from the Exposition Company and pay them the price submitted by us, namely, \$24.00. However, as this tonnage would be very small, they could use it at once on Ashby street. In addition to this, they will on the 4th prox., ask for bids to be opened at the water-board meeting at 10 a. m. on that day for the same quantity of pipe as previously asked for, and requested me to be present at that meeting and submit our bid. Mr. Erwin stated to me that it

had been discussed before the board and without a dissenting voice, they believed that the four southern shops had formed a combination against Atlanta and that Anniston was to get protection from the other shops; he said they were now at work endeavoring to secure some positive proof in that direction and if they could obtain it none of the southern shops would ever get a bid in with them any more, and the best evidence he had of it was the fact that we within a hundred miles should come in and make a price from one to two dollars per ton higher than a firm a thousand miles away. This was what they could not understand. They will, however, allow us to bid on the next letting on March 4th. In conversation with Mr. Wistar, I learned that he had been in Atlanta since I met him there last Monday in company with Engineer Moore, of the Dublin, Ga., contract, which is to be let April 2d. He knows what price we have quoted on that job for estimate and anything like the price we have made for estimate on the work will not be obtainable on the day of the letting. Mr. Wistar also spoke of having been to Savannah and would be back there some time soon to look after a hydrant bid, and as there will be work coming up in that section soon, we stand a poor chance to take same without being represented by the southern foundries when the contract is awarded.

Very truly yours,  
(Signed)

R. L. VARNER.

102

Copy letter.

CHATTANOOGA, TENN., *Feb'y* 25, 1896.

Mr. J. K. Dimmick, V. P., and all concerned.

GENTLEMEN: We are in receipt of a carbon copy of your favor of the 24th instant to F. B. Nichols, V. P., in reference to Atlanta, Ga. We certainly regret that the matter has assumed its present shape and that R. D. Wood & Company should make a lower bid by one dollar a ton than the southern shops. You know we have always been opposed to special customers and "reserved cities," we do not think that it is the right principle and we believe if the present association continues, that all special customers and "reserved cities" should be wiped out; there is no good reason why we should be allowed to handle New Orleans, you Atlanta, Howard-Harrison Iron Co., St. Louis, or South Pittsburg, Omaha. We are not in the business to award special privileges to any foundry and we believe that the result would be more benefit to all concerned if all business was made competitive. It is hardly right, and we believe if you will think over the matter carefully, you will concede it, for us to be put into a position of being unable to make prices or furnish pipe for the city of Atlanta, when we have always heretofore had a large share of their trade. We cannot explain our position to the Atlanta people and we consider it is detrimental to our business and think no combination should have the power to force us into such a position. The same argument will apply with you as to New Orleans, St. Louis and other places. We think this matter should be considered seriously and some action taken that will result in re-establishing our-

selves (I mean the four southern shops), in the confidence of the Atlanta people. Wistar, R. D. Wood & Company's man has no doubt told them all about our association, or as much as he could guess, and has worked up a very bitter feeling against us. The very fact that you have been protected and have had all their business for the past two years is proof to them that such a "combination" exists, and as they state that if they find out positively that we are working together, they will never receive a bid from any one of us again. We cannot afford to leave these people under that impression and something ought to be done that would disprove Mr. Wistar's statement to them. We believe that all business ought to be competitive. The fact that certain shops have certain cities "reserved" is all based upon mere sentiment and no good reason exists why it should be so. We believe that

103 as a general thing we have had our prices entirely too high and especially do we believe this has been the case as to prices in "reserved cities." The prices made at St. Louis and Atlanta are entirely out of all reason, and the result has been and always will be, when high prices are named, to create a bad feeling and an agitation against the "combination." There is no reason why Atlanta, New Orleans, St. Louis or Omaha should be made to pay higher prices for their pipe than other places near them who do not use anything like the amount of pipe and whose trade is not as desirable for many other reasons. There is no sentiment existing with us in reference to Atlanta as we would as soon sell our pipe anywhere else, only as stated above it is wrong in principle that we should be forced to give up Atlanta or any other point for no good reason that we know of.

Very truly yours,

CHATTANOOGA FDY. & PIPE WORKS,  
By E. B. THOMASSON.

Copy letter.

CHATTANOOGA, TENN., *Feb'y* 26, 1896.

Mr. J. K. Dimmick, vice-president, Anniston, Ala.

DEAR SIR: We are in receipt of your favor of the 25th instant in reference to R. D. Wood & Co., and prices on pipe in the South, etc. In reference to this matter the writer thinks if he could get to have a talk with Wistar that in all probability we could arrive at some better understanding in reference to work in the South. I believe I could show to Wistar, it would be to his interest to let the pipe business alone and work for the sale of his valves and hydrants. We will no doubt see Wistar in Atlanta at the letting on the 4th of March when I will take this matter up with him, of course not admitting we have any association or give him any intimation that I am talking for any one outside of the Chattanooga fdy. & pipe works. I still believe that a proper talk with R. D. Wood & Co., would result in a better understanding between us.

Very truly yours,

(Signed)

CHATT. FDY. & PIPE WORKS,  
By E. B. THOMASSON.

EXHIBIT "D."

This for your information: There were 848 tons approximately of 4, 6, 8 and 10" pipe, rather light weights. Letting April 9, 1896, 7 p. m.

CHATTANOOGA, TENN., Jan'y 3, 1896.

Mr. J. W. Thornton, auditor.

DEAR SIR: Referring to yours of the first inst. Our report of order No. 20, Geo. F. Glaskin & Co., secured—should have read 3 pieces 4" pipe—No. 11 spls. U. 16". Please change same in accordance and oblige.

Yours truly,

C. F. & P. WKS.  
D. T. R.

NOTE.—I have this in Mr. Richards' own handwriting—he is book-keeper.

Copy telegram.

CHATTANOOGA, TENN., April 14, 1896.

Lester E. Wood, agent, 100 B'gway, New York, N. Y.:

Six-inch thirty pounds, nineteen seventy-five net ton Peabody, Mass.

CHATTA. FDY. & PIPE WKS.

NOTE.—Our rate is \$6.00 (being tariff rate) netting \$13.75 at our works or about \$16.75 St. Louis, Mo., or Atlanta, Ga. Of course these quotations are made in real competition with the world.

Copy telegram.

CHATTA., TENN., April 15, 1896.

L. E. Wood, agent, 100 B'dway, New York, N. Y.:

Will furnish pipe for Lockhaven, Penn., for nineteen dollars net ton, delivered.

CHATTA. FDY. & PIPE WKS.

NOTE.—Rate \$5.55, netting \$13.45 Chattanooga or about \$16.45, St. Louis, Mo., or Atlanta, Ga.

CHATTANOOGA, TENN., April 4, '96.

Mr. J. W. Thornton, auditor, No. 401 Temple court, Chicago, Ill.

105 DEAR SIR: I received your cash statement of March 31st, together with your estimate for April, amount being \$567.30. I herewith enclose you New York exchange for \$5.70, being an assessment on each works for \$95 apiece. Kindly acknowledge receipt of this exchange.

I herewith enclose you telegraph bill from the Western Union Telegraph Company for \$5.08, which you will kindly return to me with your check for same amount, and I will have telegraph com-

pany receipt same and will send you then this receipt as your voucher.

Very truly yours, M. LLEWELLYN, *Chairman.*

Enclosures N. Y. exc. and tel. bill.

Copy telegram.

CHATTANOOGA, TENN., *April 10, 1896.*

E. B. Thomasson, 401 Temple court, Chicago, Ill.:

Hope you will have time to call and see Clow, likely will make settlement with you when there. We returned notes asked for cash settlement. Wood wires from Clifton Springs, N. Y., that South Pittsburg bid eighteen seven; Anniston, eighteen seventy-five; Buffalo, nineteen; Utica, nineteen; Addyston, nineteen twenty; McNeal and Runkle, twenty twenty-five.

M. LLEWELLYN, *Sec'y.*

NOTE.—That South Pittsburg bid \$18.07. Our tariff rate is \$5.60 to Clifton, N. Y., and South Pittsburg is ten cents less than Chattanooga, which nets South Pittsburg \$12.57 at their shops, of 15.57 St. Louis or Atlanta, Ga., or \$14.57 New Orleans.

CHATTANOOGA, TENN., *April 18, '96.*

Mr. C. M. Finkle, chairman water committee, Wytheville, Va.

DEAR SIR: We are in receipt of your favor of 14th instant, and in reply we beg to quote you one mile of 6" cast-iron water pipe, standard weights 33 lb per foot for \$18.30 per ton, two thousand pounds, and special castings for 2½ cents per pound, all delivered on board cars, Wytheville, Va. We have this pipe in stock and could give you immediate shipment. Pipe to be first class and fully tested to 300 lb per square inch, hydraulic pressure. Trusting to be favored with your order, we are,

Very truly yours,

CHATTA. FDY. & PIPE WORKS,  
By E. B. THOMASSON.

106 NOTE.—Rate to this point is \$4.80 net ton, which makes pipe f. o. b. works, Chattanooga, \$13.50 or about \$16.50 on board cars, St. Louis, Mo., or Atlanta, Ga.

Copy telegram.

CHATTANOOGA, TENN., *Apr. 1, 1896.*

L. E. Wood, agent, 100 B'dway, New York, N. Y.:

Twelve-inch nineteen forty net ton, Troy, New York.

CHATTA. FDY. & PIPE WORKS.

NOTE.—Rate \$5.40, netting \$14.00 on board cars Chattanooga, or about \$17.00 St. Louis, Mo., or Atlanta, Ga.

CHATTANOOGA, TENN., *April 27th, 1896.*

Messrs. Thomas Garlin's Sons, Allegheny, Pa.

GENTLEMEN: We propose to furnish one mile of 10" cast-iron water pipe, weighing 60 lb per foot for \$17.25 per ton, two thousand pounds, delivered on board cars Pittsburg, Pa. The pipe will be first-class quality and fully tested to 300 lb per square inch hydraulic pressure. We can give you prompt shipment upon receipt of order and must be advised of acceptance within ten days.

Very truly yours,

CHATTA. FDY. & PIPE WORKS,  
By E. B. THOMASSON.

NOTE.—Rate \$3.90, netting 13.25, on board cars at works, or about \$16.25 St. Louis, Mo., or Atlanta, Ga.

Copy telegram.

CHATTANOOGA, TENN., *Apr. 29, '96.*

Solvay Process Company, Syracuse, N. Y.:

Do not make 42" pipe, other sizes 18.45 ton, two thousand pounds, small specials 2½ cents, large 2¾ cents pound, all delivered on board cars, Syracuse, N. Y. Complete shipment inside of thirty days, except as to specials for large.

CHATTA. FDY. &amp; PIPE WORKS.

NOTE.—Rate \$4.95, netting \$13.50 on board cars, Chatta. or about \$16.50 St. Louis, Mo., or Atlanta, Ga.

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Copy telegram.

CHATTANOOGA, TENN., *Mar. 27, '96.*

Lester E. Wood, agent, 100 Broadway, New York, N. Y.:

Nineteen eighty net ton Malden, Mass.; prompt shipment. This is low figure, perhaps you can get more. Would like to have you ascertain, if possible, what figure is required to take such orders.

M. LLEWELLYN.

NOTE.—This pipe wanted consists of 6, 8 and 12". Rate tariff \$6.00, with possibility of \$5.40. Granting \$5.40 would net \$14.40 Chatta. or \$17.40 St. Louis, Mo., or Atlanta, Ga. Of course in recent letting St. Louis there were some 3 and 4", which would make 3" three dollars, and 4" one dollar ton higher, but on major part of order there is \$6 60 per ton difference in these quotations.

EXHIBIT "E."

CINCINNATI, OHIO, *December 28th, 1895.*

M. Llewellyn, chairman, Chattanooga, Tenn.

DEAR SIR: Please record the Addyston Pipe & Steel Co. as voting "aye" on the question of changing the agreement as per resolution No. 7, offered by Mr. Nichols, at meeting held at Lookout mountain,



December 19th and 20th, 1895, this change, as we understand it, is to the effect that the division of bonuses to the various classes shall be upon the bonuses of work shipped into pay territory, instead of work secured in any territory as heretofore. We are influenced in the matter by the fact that under the old rule the South Pittsburg and Anniston shops were placed at a disadvantage as compared with the other shops. It was gratifying to us to know the general desire for fairness which was made more apparent at the last meeting than any other occasion since the present association was formed, and we believe that it is an indication that the results of '96 will be more satisfactory to all interested than for the year just closed, in which we had but little more than six months on the "auction basis," by which alone the shops were benefited.

In connection with the change above referred to we desire to say that at the next meeting we shall ask for a little further modification of the agreement under which it is proposed to work for the

ensuing year, namely: that the aggregate tonnage before the "reserve" is reached shall be made 200,000 tons instead of

220,000 tons. Our reasons, in part, are to a great extent the plans for '96 must be based upon the experience of '95. During the latter, the aggregate tonnage shipped by all shops into all territory will amount to something over 230,000 tons. Including in this, however, is approximately 41,000 tons of old business carried over from 1894. The auditor estimates that not to exceed 5,000 tons will be carried over from 1895 to '96, so that on this year's basis the tonnage for '96 would be approximately 195,000 tons. Again in '95 the tonnage in both pay and free territory were counted in making up 220,000 tons, and approximately 43,000 tons which was shipped into free territory was used to swell the amount, which left only about 187,000 tons of old business and new business for '96, the full 220,000 must be shipped into pay territory before the reserve commences. In other words the "reserve" is put further away by nearly 40,000 tons. At the time the association was formed Mr. Davis and myself used the argument with our directors that the apparent inequality of our percentage might be offset by the division of the "reserve" in case it was reached. Our expectations, however, in this direction, have not materialized, but by the recent vote the prospects of reaching the "reserve" are made even more remote. We therefore wish to ask that the matter of equalization be made more probable by reducing the limit from 220,000 to 200,000 tons, and suggest that it be done by *pro rata* cut on each class as shown by the following table:

16" and under . . . . .	90,000	16" and under . . . . .	81,818
18" to 30" . . . . .	75,000	18" to 30" . . . . .	68,182
36" . . . . .	40,000	36" . . . . .	36,364
40" to 60" . . . . .	15,000	40" to 60" . . . . .	13,636
	<hr/> 220,000		<hr/> 220,000

The tonnage would be divided :

	1895 method.	Proposed '96 method.
So. Pittsburg.....	15,000	13,637
Anniston.....	30,000	27,273
Chattanooga.....	40,000	36,364
Louisville.....	45,000	40,909
Bessemer.....	45,000	40,909
Cincinnati.....	45,000	40,909

This plan accomplishes the object without discrimination  
109 against any one. A shop who may prefer to take the bonuses  
instead of making heavy shipments will not be affected in  
any way by the change, for under neither method they would not  
reach or participate in the "reserve fund," if any there be, while  
shops who ship more heavily make up in their share of the "reserve"  
exactly what they relinquish in the general fund.

We have tried to state the case clearly so it may be fully under-  
stood, and trust that our request for this slight modification will be  
granted at the next meeting.

A copy of this letter goes to all shops.

Yours very truly,  
(Signed)

B. F. HAUGHTON, V. P.

FEB'Y 20TH, 1896.

Mr. John W. Harrison, president Howard-Harrison Iron Co., Besse-  
mer, Ala.

DEAR SIR: Have your letter of the 18th addressed to me as chair-  
man; I have thought over the contents of your letter very seriously.  
You are no doubt aware how Chattanooga stands regarding Chicago  
as headquarters for our association. I was somewhat in hopes that  
in our last meeting the question would again be brought up as to  
the removal from Cincinnati to Chicago, but this was not done. I  
question very much the adoption of the policy now suggested by  
you to have the chairman of the association write the various works  
looking to a removal of office to Chicago by not later than March  
1st, 1896. You know the situation too well to have me say much  
on the subject; two companies, the Anniston Pipe & Foundry Com-  
pany and Dennis Long & Company were the only two opposing  
ones to this removal, and it is with these two very companies that  
we have to treat with before we can accomplish anything. I dis-  
like one of the rulings of our association very much, and that is that  
it requires five votes out of six to carry any measure whatever, it is  
"un-American" to have such rules, majorities are sometimes dan-  
gerous, but minorities are still more dangerous, especially when so  
few can rule the many, and we must very soon have this rule  
changed to a "majority rule" or our association is naturally in a  
very dangerous condition; I cannot see how it is possible that we  
can make the change as early as you suggest, March 1st, far better,  
I think it would be to say April the 1st, and take the matter up at

our next meeting at Cincinnati, on March 13th, '96, and perhaps we can carry the measure through, five votes out of six; then giving some time from the 13th to the 31st of March for removal of office. I think if you would take up this matter with Mr. J. K. Dimmick, and also with Mr. Callahan, and more especially with Mr. Callahan, previous to the meeting, you may get him to consent to this removal. Receiving your letter yesterday just previous to Mr. Thomasson's departure for Chicago, I urged upon him his bringing the matter up with Mr. Callahan, while there, urging upon him to look to the interest of the association in consenting to a removal. After Mr. Thomasson's return I will write you again letting you know just how Mr. Callahan stands at the present time regarding this removal. In the meantime I will not write to the various companies on the subject until I shall hear from you more fully. This is the reason why I write you today. The motion that was made at our January meeting to remove our office to Chicago should not have been defeated, and now I think we should have well-developed plans with the view of succeeding in getting to Chicago rather than getting up any further discussion on the subject.

Very truly yours,

M. LLEWELLYN.

Copy letter.

CHATTANOOGA, TENN., Jan'y 2, 1896.

Mr. W. H. Flint, Cincinnati, O.

DEAR SIR: Referring to our policy for 1896, in bidding on pipe we have had this matter under consideration for some time past, and from the information obtained from Mr. Thornton's statement as to the amount of business done last year in pay territory and from estimates that we have made for business that will come into that territory for 1896, we have been able to determine to what point we could bid on work and take contracts, and if bonus is forced above this point, let it go and take the bonus. We note from your letter of yesterday that you have sized up the situation in its essential points, and it agrees exactly with our ideas on the subject. It is useless to argue that Howard-Harrison Iron Co., Cincinnati and other shops, who have been bidding bonuses of six or eight dollars per ton, can come out and make any money if they continue to bid such bonus. In the case of the Howard-Harrison Iron Co., people on Jacksonville, Florida. The truth of the business is they are losing money at the prices they bid for this work. If they take the contract at \$19 delivered, it will only net \$16 at the shop  
 111 after they have paid back the bonus of \$4.75; if they should continue to buy all the pipe that goes up to such figures as they have paid for Jacksonville and other points, they would wreck their shop in a few months. However, they of course calculate this bonus will be returned to them on work taken by other shops. We are very much pleased with the bonus that has been paid and we only hope they will keep it up, as it is only money in our pockets. As long as there is no money to us let them make the pipe, as we shall continue to do so.

For the present you will adopt the following basis:

On 16" and under standard weights, 14.25 at shop.

On 18" and 36" stand. weights, \$13.00.

On 16" and under light weights, 14.50 to 14.75 at shop.

That is, you will bid all over \$13, 14.25 and 14.50 on work. If we get work at these prices it will be satisfactory. If the others run bonus above this point, let them take it as it will be more money to us to take the bonus.

We note Mr. Thornton's report of average premiums from June 1 to Dec., that the average was \$3.63. The average bonuses that are prevailing today are 7 to 8 dollars. We cannot expect this to continue, and we think your estimate of \$6 ton average bonus is high—as we do not believe the premiums for '96 will average that price, unless there is a decided change for the better in business. We find there was sold and shipped into pay territory from Jan'y 1, 1895, to date, including the 40,000 tons of old business that did not pay a bonus, about 188,000 tons, and we think a very conservative estimate of shipments into this territory will amount to fully 200,000 this year, more than that, probably overrun 240,000 tons, from the fact that the city of Chicago and several other places that annually use large quantities of pipe were not in the market last year, or last season, from the fact that they were out of funds. On the basis as given you above, if the demand should reach 220,000 tons, which would give us our entire 40,000 tons, provided we did no business, then the association would pay us the average "bonus" which might be from \$3.50 to \$5 on our 40,000. If we cannot secure business in "pay territory" at paying prices, we think we will be able to dispose of our output in "free territory," and of course make some profit on that.

At the prices that Howard-Harrison people paid for Jacksonville, Des Plaines and one or two other points, they are losing from \$2.50 to \$3 per ton, that is, provided "bonuses" would not be returned to them. Therefore when business goes at a loss we are willing that the other shops make it.

Just a few minutes ago we had a telegram from Nichols at Jacksonville, stating that he could secure contract for water pipe at \$19 and \$19.19 for the sewer pipe, and wanted to know how much small pipe we would furnish. We replied at once we did not want any of the business. He furthermore states that unless he takes contract at these prices that the job will be advertised.

We await with some interest the outcome of this matter as to whether Mr. Nichols will take the job or whether he will throw it off and let it come to a reletting.

Very truly yours,

CHATTA. FDY. & PIPE W'KS,  
By E. B. THOMASSON.

P. S.—Do not leave this letter on your desk where it might fall into the hands of others. Make a memorandum and tear the letter up. Above all things make a confident of no one in business matters.

## EXHIBIT "F."

To all shops.

GENTLEMEN: I have this day made dr'ft on the several works for the sum of twenty-five dollars each and have forward- to Mr. J. W. Thornton exchange for \$150.00 covering same. Mr. Thornton will write each works the reason of this extra assessment and will show its necessity on account of removal of office to Chicago and the expense incident to becoming occupants of more commodious quarters at Chicago than we had at Cincinnati.

Very truly yours,

M. LLEWELLYN, *Chairman.*

South Pitts.

GENTLEMEN: Receiving a letter some days ago from Mr. A. F. Callahan, vice pres't Dennis Long & Company, copies of same *was* sent to each works. I have also a letter from Mr. J. K. Dimmick, vice-president of Anniston Pipe and Fdy. Co., stating it is his belief that we should accept the suggestion made by Mr. Callahan to hold our meeting the last of March instead of the 13". Mr. Dimmick having also made arrangements to meet some California parties on the 14th almost prevents his being able to get to Chicago on the 13".

113 Still I have other letters in response to Mr. Callahan's letter urging upon our holding our meeting at Chicago on the 13th day of March. They are anxious to get to Chicago at as early a day as possible in order to get their respective committeemen fully established in an office, etc., etc.

I think also that it would be well that the principals meet early, not later than 13", as there are matters of vital importance requiring their attention. I believe you will all realize this. A conference of the principals will enable the committee to know how to act regarding prices of pipe, etc., and some plan may be devised whereby we can keep Drummond and others from invading our western territory, hence, let it be understood that we meet at our auditor's rooms at 10'clock a. m. Friday, Mar. 13, 1896.

Very truly yours,

M. LLEWELLYN, *Chairman.*

Dennis Long & Co., Louisville, Ky.:

No replies yet from Anniston and Bessemer. South Pittsburg wires cannot attend earlier than fourteenth; have wired them again to attend Friday, important, will keep you posted.

M. LLEWELLYN, *Chairman.*

South Pittsburg pipe works:

Wire Harrison to attend meeting Friday at Cincinnati, very important, should meet before fourteenth. Think all others will be present.

M. LLEWELLYN, *Chairman.*

CHATTANOOGA, TENN., Feb'y 28th, 1896.

To all shops:

Mr. C. W. Harrison, vice-pres., South Pittsburg pipe works, writes the chairman under date the 27", suggesting that now, since our

committee and also our auditor are or will be located at Chicago, that the place to hold the next meeting of principals, March 13<sup>th</sup>, be changed from Cincinnati to Chicago, deeming it best to go this time to Chicago so that each principal may see to their respective committeemen being properly located in their new home. Your chairman thinks this a good suggestion, and therefore submits the same to the different companies, desiring an expression from each and if five out of six decide that the place of meeting be changed to Chicago (for this one time), we will make the change by

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so informing each work and also our auditor.

Trusting to have early replies, I remain,

Yours truly,

M. LLEWELLYN, *Chairman.*

J. K. Diminick, vice-pres., Anniston, Ala. :

Letter seventh from Nichols, you have copy, indicates your inability to attend Chicago thirteenth, but could attend twentieth, if such be the case, wire me immediately, will change to twentieth, want you at Chicago meeting.

M. LLEWELLYN, *Chairman.*

GENTLEMEN: Receiving a letter from Mr. Harrison, president Howard-Harrison Iron Co., under date of Feb'y 18th, in which he urges the removal of our headquarters from Cincinnati to Chicago, desires this to be done as early as possible, naming the date March 1st, next. Copy of his letter to each concern has been duly received, and will at this date have had time to consider and decide each one for themselves. Mr. Harrison certainly gives some good reason for this removal, and I believe if there was a meeting of the principals today and at that meeting this very question brought up, it would pass without a dissenting voice. If such be the case, I see no reason why the suggestion made by Mr. Harrison could not be carried out by each work writing the chairman their decision, and if a majority are in favor—five out of the six works—the chairman then can request the auditor to at once secure suitable quarters at Chicago and remove his office by March 1st. The chairman was under the impression that owing to such a short time to March first, the removal could not well be made without confusing matters to a considerable extent. Conversation had today with our auditor, Mr. Thornton. He states that removal could be made between this time and March first (if we decide to go), better now than later, when business revives this office force will have much more to do than now. Kindly take up this matter tomorrow, and let me hear from you by Monday morning, and if all are of one accord, will advise auditor at once. Objections to removal some time ago was made that the distance to Chicago for holding meetings of principals was too far from some of the shops, replying to this, will say that it does not necessarily follow that the principals would have to go to Chicago any more than now, these meetings can be held anywhere.

Trusting to hear from you at once, I remain,

Yours truly,

M. LLEWELLYN.



115 John W. Harrison, president, Bessemer, Ala.:

Incidentally heard today that J. K. Dimmick is now favorable to removal Chicago. Write him a personal letter intimating nothing you have heard, his answer may commit him positively to removal.

M. LLEWELLYN.

Charge M. Llewellyn, chairman.

Anniston Pipe & Fody. Co., Anniston, Ala.:

Toledo matter will be taken up meeting tomorrow if all will attend. Answer if you will be represented.

M. LLEWELLYN, *Chairman*.

A. F. Callahan, vice-president Dennis Long & Co., Louisville, Ky.:

I know now date mentioned for meeting will not suit. South Pittsburg has annual meeting on eleventh.

M. LLEWELLYN, *Chairman*.

Charge M. Llewellyn, chairman.

Louisville, Cincinnati, South Pittsburg, Bessemer, Anniston:

Owing to the fact Bessemer and South Pittsburg failing to respond to my message for meeting tomorrow, meeting of principals will be deferred to fourteenth. Committee can act upon Toledo matter Monday or Tuesday next.

M. LLEWELLYN, *Chairman*.

Anniston Pipe & Fdy. Co., Howard-Harrison Iron Co., South Pittsburg pipe works:

Do you intend being represented at meeting of principals at Cincinnati, tomorrow; answer at once.

M. LLEWELLYN, *Chairman*.

Lester E. Wood:

Nineteen eighty net ton Malden, Mass. Prompt shipment; this is low figure, perhaps you can get more; would like to have you ascertain if possible what figure is required to take such orders.

M. LLEWELLYN.

All shops; also J. W. Thornton:

116 Now well understood meeting of principals will be held Chicago next Friday morning, thirteenth, ten o'clock.

(3, 10, '96.)

M. LLEWELLYN, *Chairman*.

John W. Harrison, president Shickle, Howard & Harrison, St. Louis, Mo.:

Message received, have failed to get all agreed to meeting tomorrow, consequently meeting of principals deferred until fourteenth.

M. LLEWELLYN, *Chairman*.

## EXHIBIT "G."

*General Statement, Feb'y 1 to 15, 1896.*

Bessemer remits....	\$6,295 07	To Chattanooga....	\$2,264 74
		To Anniston.....	1,817 64
		To South Pittsburg..	1,448 61
		To Cincinnati.....	764 08
Louisville remits....	1,627 45	To Cincinnati.....	1,627 45
	<u>\$7,922 52</u>		<u>\$7,922 52</u>

*Feb'y 16 to 29, 1896.**Settlements.*

Bessemer remits....	\$8,534 30	To Chattanooga....	\$3,147 05
		To Anniston.....	2,150 36
Louisville remits....	1,217 91	To South Pittsburg..	1,746 87
	<u>\$9,752 21</u>	To Cincinnati.....	1,490 02
		To Cincinnati.....	1,217 91
			<u>\$9,752 21</u>

*Settlements.*

Bessemer remits....	\$1,772 69	To Chattanooga....	\$1,634 62
		To South Pittsburg..	138 07
Anniston remits....	589 06	To South Pittsburg..	589 06
		To South Pittsburg..	334 12
Louisville remits....	1,721 55	To Cincinnati.....	1,387 43
	<u>\$4,083 30</u>		<u>\$4,083 30</u>

117 *General Statement, March 16 to 31st, 1896. J. W. T.*

Bessemer remits....	\$3,958 03	To Chattanooga....	\$3,188 41
		To Cincinnati.....	588 95
		To Anniston.....	180 67
		To Anniston.....	704 01
Louisville remits....	1,553 52	To South Pittsburg..	849 51
	<u>\$5,511 55</u>		<u>\$5,511 55</u>

*General Statement, April 1 to 15, 1896.**Settlements.*

Bessemer remits....	\$4,260 64	To Chattanooga....	\$4,260 64
Louisville remits....	1,126 06	To Chattanooga....	369 87
		To South Pittsburg..	756 19
Cincinnati remits...	2,621 56	To South Pittsburg..	1,907 00
		To Anniston.....	714 56
	<u>\$8,008 26</u>		<u>\$8,008 26</u>

THE UNITED STATES.

3575  
99

*General Statement, Jan. 1 to 15, 1896.*

Settlements.

Bessemer remits.....	\$882 19	To Anniston.....	\$882 19
		To Anniston.....	290 53
Chattanooga remits..	2,016 25	To Cincinnati.....	1,158 62
		To South Pittsburg..	567 10
Louisville remits....	51 86	To South Pittsburg..	51 86

*General Statement, January 16 to 31, 1896.*

Bessemer remits.....	\$2,685 47	To Chattanooga.....	\$212 66
		To Anniston.....	1,475 45
		To South Pittsburg..	644 82
		To Louisville.....	40 91
		To Cincinnati.....	311 63

Feb'y 13, 1896.

Messrs. Howard-Harrison Iron Co., Bessemer, Ala.

GENTLEMEN: Have yours dated the 12th found enclosed your check on Commercial Bank of St. Louis, for \$216.66, being the amount due us upon premium statement January 16th to 31st, inclusive, statement having been rendered by Mr. J. W. Thornton, auditor.

118 Thanking you for this remittance, we remain

Very truly yours,

CHATTANOOGA FDY. & PIPE WORKS.  
M. LLEWELLYN, Sec'y.

MARCH 17, 1896.

Messrs. Howard-Harrison Iron Co., Bessemer, Ala.

GENTLEMEN: Have yours of the 16th and found enclosed your check on Commercial Bank of St. Louis, check No. 2592 for \$3,147.05 premium due us as per statement of Mr. J. W. Thornton, for the period of February 15th to 29th, 1896, inclusive.

Very truly yours,

CHATTA. FDY. & PIPE WORKS.  
M. LLEWELLYN, Sec'y.

MARCH 30, 1896.

Messrs. Howard-Harrison Iron Co., Bessemer, Ala.

GENTLEMEN: Have yours of the 28th and found enclosed your check No. 1411 for \$1,634.62, being amount as per our auditor's statement from March 1 to 15, 1896, inclusive.

Kindly accept thanks.

Very truly yours,

CHATTA. FDY. & PIPE WORKS.  
M. LLEWELLYN, Sec'y.

APRIL 15, 1896.

Messrs. Howard-Harrison Iron Co., Bessemer, Alabama.

GENTLEMEN: Have yours of the 14th and found enclosed your check No. 2562 on Commercial Bank of St. Louis, Mo., for \$3,188.41, being amount due us as per Mr. Thornton's statement March 16th to 31st, inclusive. Please accept thanks.

Very truly yours,

CHATTA. FDY. & PIPE WORKS.  
M. LLEWELLYN, *Sec'y.*

APRIL 28, 1896.

Messrs. Howard-Harrison Iron Co., Bessemer, Alabama.

GENTLEMEN: Have yours of the 27th and found enclosed  
119 on Bessemer's savings bank No. 1492 for \$4,260.64 as per Mr. Thornton's report of shipments April 1 to 15, 1896.

Thanking you for this remittance, we are,

Very truly yours,

CHATTANOOGA. FDY. & PIPE WOKS.  
M. LLEWELLYN, *Sec'y.*

CHATTANOOGA, TENN., *January 31, 1896.*

Addyston Pipe &amp; Steel Co., Cincinnati, Ohio.

Dennis Long &amp; Co., Louisville, Ky.

Howard-Harrison Iron Company, Bessemer, Alabama.

Anniston Pipe &amp; Foundry Company, Anniston, Ala.

South Pittsburg pipe works, South Pittsburg, Tenn.

Chatta. foundry &amp; pipe works, Chattanooga, Tenn.

GENTLEMEN: Having received estimates for salaries in our auditing department for the month of February, I have this day made draft on each concern for \$110 each, which please honor.

I have forwarded to our auditor, Mr. J. W. Thornton, Cincinnati exchange for the amount—\$660.

Very truly yours,

M. LLEWELLYN, *Chairman.*

Encls. Cint. exchange.

APRIL 4, 1896.

J. W. Thornton, auditor, No. 401 Temple court, Chicago, Ills.

DEAR SIR: I received your cash statement of March 31st, together with your estimate for April, amount being \$567.30. I herewith enclose you New York exchange for \$570 being an assessment on each works of \$95 apiece. Kindly acknowledge receipt of this exchange.

I herewith enclose you telegraph bill from the Western Union Tel. Company for \$5.08, which you will kindly return to me with your check for same amount, and I will have telegraph company receipt same and will send you their receipt as your voucher.

Very truly yours,

M. LLEWELLYN, *Chairman.*

Enclosure—N. Y. ex., and tel. bill.

Mr. J. W. Thornton, auditor, No. 401 Temple court, Chicago, Ill.

DEAR SIR: Received your cash statement of April disbursements, and your estimate for the month of May—\$557.14.

I herewith enclose you New York exchange for \$570 being an assessment made on each company of \$95.

Very truly yours, M. LLEWELLYN, *Chairman.*

Enclosure New York exchange.

EXHIBIT "H."

Copy.

SOUTH PITTSBURG, TENN., April 13, 1896.

Mr. J. G. Miller, Chicago, Ills.

DEAR SIR: Omaha, Neb. Our representative at Omaha advises that the American Water Works Co., is in the market for:

305 pieces 16" weighing 1,600 #.

145 pieces 24" weighing 3,180 #.

130 pieces 24" weighing 3,600 #.

As you will remember the original resolutions of our association will not permit of our handling during this year any sizes from the American Water Works Company larger than we manufacture. This, however, places us in rather an embarrassing position, and we therefore wish that you would ask permission from the committee for us to handle the above 24". The order, in case we secure it to be disposed of in the usual way by the committee. It seems that our Omaha representative during last year allowed the American Water Works Company to think that we manufacture 24" and 30" pipe, and it will not therefore be advisable for us to come forward now and refuse to bid on this small inquiry; furthermore, all the committeemen will appreciate the fact that it would be unadvisable for us to be the lowest bidder on the 16" and some one else the lowest on the 24". Please have the committee duly consider the matter and advise us promptly whether or not they will authorize our representative to handle the entire order, he to receive his usual commission of 50 cents per ton, and this commission to be paid by the foundry shipping the pipe.

You may say to the committee that Mr. Collins is in a position to get refusal of the work at the lowest price submitted. He informs us now, however, that the water works company has just engaged an engineer by the name of Mr. Prince, who was formerly connected with R. D. Wood & Company, both as salesman and as engineer belonging to them. Mr. Collins seems to think that Mr. Prince will make him some trouble, especially if we try to obtain too high a price.

Very truly yours,

(Signed) SOUTH PITTSBURG PIPE WORKS.

Copy.

CHATTANOOGA, TENN., *April 15, 1896.*

Mr. W. H. Flint, No. 401 Temple court, Chicago, Ill.

DEAR SIR: We herewith enclose you letter from South Pittsburg in reference to inquiry from American water works of Omaha, Neb., for 16" and 24" pipe. We have no objection to South Pittsburg handling this 24" pipe with the exception we cannot see where it is to the interest of the association to allow 50 cents per ton commission to Collins.

Very truly yours,  
(Signed) CHATTA. FDY. & PIPE WORKS,  
By E. B. THOMASSON.

Enclosure copy of So. Pittsburg's letter.

Copy.

CHATTANOOGA, TENN., *April 28th, 1896.*

Messrs. South Pittsburg Pipe Works, South Pittsburg, Tenn.

GENTLEMEN: We are in receipt of specifications from the American Water Works Company for Omaha, Neb., for prices on—

136 pieces 24" class "C,"

150 pieces 24" class "B,"

305 pieces 16" class "A,"

and a lot of specials.

Please advise us at once as to what figure we shall make on this work. Please do not ask us to make a price of two or three dollars per ton higher than yours but give us a reasonable price to name.

Very truly yours,  
(Signed) CHATTA. FDY. & PIPE WORKS,  
By E. B. THOMASSON.

122

Copy.

SOUTH PITTSBURG, TENN., *April 29, 1896.*

The Chattanooga foundry &amp; pipe works, Chattanooga, Tenn.

GENTLEMEN, Omaha, Nebraska: Confirming the writer's 'phone conversation with your Mr. Thomasson, we request that you please quote the American Water Works Company of Omaha price of \$24.80 per ton of two thousand pounds f. o. b. Omaha. We would suggest that you quote them on specials made from your regular pattern price of 2½ cents per pound f. o. b. Omaha. There is little hope of our getting the order for special castings as they have always been made heretofore by local foundries in Omaha.

Yours very truly,  
(Signed) C. W. HARRISON,  
Vice-Pres'd't,



Copy.

CHATTANOOGA, TENN., April 20th, 1896.

Mr. Elias L. Bierbower, receiver American Water Works Co., Omaha, Neb.

DEAR SIR: Replying to your favor of the 25th instant, we propose to furnish cast-iron pipe as per specifications for \$24.80 per ton two thousand pounds, and will furnish special castings from our regular patterns for two and one-fourth cents per pound, all delivered on board cars Omaha, Neb. We are in a position to give you prompt shipment on this pipe and trust this time we will be favored with your order.

Very truly yours,  
(Signed) CHATTA. FDY. & PIPE WORKS,  
By E. B. THOMASSON.

*Affidavit of H. D. Hallett. Filed by Defendants.*

(Endorsed:) Filed January 25th, 1897. Henry O. Ewing, cl'k.

123 In the United States Circuit Court for the Southern Division  
of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE &amp; STEEL COMPANY ET AL. }

STATE OF ILLINOIS, }  
County of Cook. }

Before me the undersigned, a notary public in and for the State and county aforesaid, personally appeared H. D. Hallett, who being duly sworn deposed as follows:

I am a citizen of Aurora, Illinois, and a contractor in the business of building and extending water works for municipalities and private corporations throughout the United States.

In the prosecution of his own business he has been for years familiar with the prices with which contracts to furnish pipe have been let and with the number of pipe manufacturers in the United States.

That there has been since December 28th, 1894, according to his knowledge, the following pipe works in operation:

Glamorgan Pipe & Foundry Co., Lynchburg, Va.  
National foundry & pipe works, Scottdale, Pa.  
R. D. Wood & Co., Philadelphia, Pa.  
The McNeil Pipe & Foundry Co., Burlington, N. J.  
Warren Foundry & Machine Co., Phillipsburg, N. J.  
Reading Iron Co., Reading, Pa.  
Buffalo Cast Iron Pipe Co., Buffalo, N. Y.  
Utica Pipe & Foundry Co., Utica, N. Y.  
Shickle, Harrison & Howard Iron Co., St. Louis, Mo.  
Howard-Harrison Iron Co., Bessemer, Ala.

Anniston Pipe & Foundry Co., Anniston, Ala.  
 Dennis Long & Company, Louisville, Ky.  
 South Pittsburg pipe works, South Pittsburg, Tenn.  
 Chattanooga foundry & pipe works, Chattanooga, Tenn.  
 Addyston Pipe & Steel Co., Cincinnati, O.  
 Michigan Peninsular Car Mfg. Co., Detroit, Mich.  
 Ohio Pipe Co., Columbus, O.  
 Lake Shore foundry, Cleveland, O.  
 J. B. Clow & Sons, Chicago, Ills.  
 Jackson & Woodin Mfg. Co., Berwick, Pa.

That affiant has since December 28th, 1894, contracted with the above foundries to furnish pipe for the purpose of constructing and extending water-works systems in amounts as follows:

124      296 tons, purchased from South Pittsburg pipe works, delivered at Milford, Illinois.

25 tons purchased from J. B. Clow & Son, delivered at Watseka, Ills.

150 tons purchased from South Pittsburg pipe works, delivered at Morris, Ills.

50 tons, purchased from Crane Co., Chicago (jobbers), delivered at Highland Park, Ills.

18 tons, purchased from South Pittsburg pipe works, delivered at Hinsdale, Ills.

40 tons, purchased from the Addyston Pipe and Steel Co., delivered at Park Ridge, Ills.

10 tons, purchased of the Addyston Pipe & Steel Co., delivered at Hinsdale, Ills.

At the prices at which the above-mentioned pipe was furnished were the lowest of any that could be obtained from the pipe works mentioned above, and from affiant's knowledge of the variations of the pig-iron market, the cost of manufacturing pipe, capital required, etc., affiant considers said prices as fair, reasonable and satisfactory.

(Signed)

H. D. HALLETT.

Subscribed and sworn to before me by H. D. Hallett, this 13th day of January, 1897.

[SEAL]

(Signed)

MARTHA W. RIDDELL,

*Notary Public in and for Cook County, Illinois.*

*Affidavit of Geo. C. Morgan. Filed by Defendants.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF ILLINOIS, }  
 County of Cook, } ss :

Personally appeared before me, the undersigned, a notary public

in and for the county and State aforesaid, Geo. C. Morgan, who being duly sworn, deposes and says as follows:

125 I am a citizen of Illinois, and a contractor in the business of building and extending water works. During the years 1895 and 1896, I had occasion to make large purchases of cast-iron pipe. I have received prices from the Addyston Pipe & Steel Company of Cincinnati, Ohio, in competition with the National Pipe & Foundry Company of Scottdale, Pennsylvania; Ohio Pipe Company of Columbus, Ohio; Lake Shore foundry of Cleveland, Ohio; J. B. Clow & Sons and others, and all purchases made by me from the Addyston Pipe & Steel Company have been when their prices *was* the lowest in competition with other foundries.

Affiant further says that on account of his position as contractor, he is familiar with the prices of cast-iron pipe, and that the prices received from the Addyston Pipe & Steel Company were reasonable and satisfactory.

(Signed)

GEO. C. MORGAN.

Sworn and subscribed to before me, this 13th day of January, 1897.

[SEAL.]

(Signed)

FRANK E. BRADLEY,

*Notary Public.*

*Affidavit of F. A. W. Davis. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF INDIANA, } ss:  
County of Marion, }

Personally appeared before me, the undersigned, a notary public in and for the county and State aforesaid, F. A. W. Davis, who, being duly sworn, deposes and says as follows:

I am a citizen of Indiana, and the vice-president of the Indianapolis Water Company, in the city of Indianapolis, and as such it was my business, in the early part of 1896, to contract for and  
126 purchase a large quantity of cast-iron water pipe, being all of the pipe that the Indianapolis Water Company would use during the year 1896.

I asked for proposals for the furnishing of said pipe, and received bids from the Addyston Pipe & Steel Company, R. D. Wood & Company, J. B. Clow & Son, the Ohio Pipe Company, the Lake Shore foundry and other pipe manufacturers.

Affiant further says that there was active competition among such pipe foundries to obtain our order, but that the Addyston Pipe &

Steel Company was the most favorable bidder, and obtained the contract to furnish us with such pipe as we wanted.

Affiant further says that on account of his position as vice-president, he became familiar with the current prices of cast-iron pipe and knew the market value thereof; that the contract price with the Addyston Pipe & Steel Company was reasonable and satisfactory to the Indianapolis Water Company, and that there has been no objection raised thereto.

(Signed)

F. A. W. DAVIS.

Sworn and subscribed to before me, this 31st day of December, 1896.

[SEAL.]

(Signed)

GEO. L. RASCHIG,

Notary Public.

*Affidavit of R. R. Dickey. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF OHIO, }  
County of Montgomery, } ss:

Personally appeared before me, the undersigned, a notary public in and for the county and States aforesaid, R. R. Dickey, who, being duly sworn, deposes and says as follows:

I am a citizen of Ohio, and president of the Dayton Gas  
127 Light & Coke Company, in the city of Dayton, Ohio, and as such, it was my business, in March, 1895, to contract for and purchase a quantity of cast-iron gas pipe, being all the pipe that the Dayton Gas Light & Coke Company would use during the year 1895; and also in June, 1896, to purchase all of the pipe which the Dayton Gas Light & Coke Company would use during the year 1896. I asked for proposals for the furnishing of said pipe, and received bids from the Addyston Pipe & Steel Company of Cincinnati, Ohio, and the Ohio Pipe Company of Columbus, Ohio.

Affiant further says that there was active competition between these pipe foundries to obtain the orders, but that the Addyston Pipe & Steel Company was the most favorable bidder, and obtained the contracts to furnish us with such pipe as we wanted.

Affiant further says that on account of his position as president of the gas company, he was familiar with current prices of cast-iron pipe, and knew the market value thereof; that the contract prices with the Addyston Pipe & Steel Company were reasonable and satisfactory to the Dayton Gas Light & Coke Company, and that there has been no objection raised thereto.

(Signed)

R. R. DICKEY.

THE UNITED STATES.

Sworn and subscribed to before me, on this 4th day of Jan'y, 1897.

[SEAL.]

(Signed)

J. S. McMAHON,

Notary Public, Montgomery Co., Ohio.

*Affidavit of Peter Moran. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF LOUISIANA, {  
Parish of Orleans. }

Before me, the undersigned, a notary public, in and for the parish of Orleans, aforesaid, personally appeared Peter Moran, who, being duly sworn, deposes as follows:

128 I am a citizen of New Orleans, Louisiana; I am superintendent and purchasing agent of the Jefferson City Gas Light Company, which is located and doing business in the city of New Orleans, Louisiana. It is and has been for six (6) years my business to purchase all supplies for the company above mentioned, and since December 28th, 1894, I purchased from the South Pittsburg pipe works the following amounts of cast-iron pipe:

Dec. 20, 1895.....	19 tons.	Feb. 10, 1896... ..	2 tons.
Oct. 18, 1895... ..	19 "	Aug. 7, 1896.....	18 "
Feb. 10, 1896.....	7 "	Sep. 19, 1896.....	15 "
Feb. 10, 1896.....	12 "	Dec. 17, 1896.....	15 "

Affiant further says that on account of his position as purchasing agent for the Jefferson City Gas Light Co., he became familiar with the prices of cast-iron pipe and knew the market value thereof. That the prices at which the above material was purchased were entirely satisfactory to himself and to his company, and affiant considers said prices to be fair and reasonable.

Affiant further states that the prices at which he purchased pipe for his company during the years 1895 and 1896, were much lower than the prices of any of his previous purchases, during the years 1891, 1892, 1893 and 1894.

(Signed)

PETER MORAN.

Subscribed and sworn to before me by Peter Moran, this 18th day of January, 1897.

[SEAL.]

(Signed)

JOHN J. WARD,

Notary Public in and for Orleans Parish, Louisiana.

*Affidavit of W. H. Garrett. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES  
vs.  
THE ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF ILLINOIS, {  
County of Cook. }

Before the undersigned, a notary public in and for the  
129 State and county aforesaid, personally appeared W. H. Garrett, who being duly sworn deposed, as follows:

I am a citizen of Batavia, Illinois. I am agent of the Fairbanks, Morse & Co., a corporation whose main office is located at Chicago, Illinois, and which is engaged in the business of constructing water works for municipalities throughout the United States, as well as other lines of business, such as manufacturing and selling Fairbanks' standard scales, steam-engines, windmills, &c.

That as agent for Fairbanks, Morse & Co., he has charge of its water-works department, and in the prosecution of the business, he has been for a number of years familiar with the prices at which contracts to furnish pipe have been let, and with the number of pipe manufacturers in the United States.

That there have been since December 28, 1894, according to his knowledge the following pipe works in operation:

Glamorgan Pipe & Foundry Co., Lynchburg, Va.; National foundry & pipe works, Scottdale, Pa.; R. D. Wood & Co., Philadelphia, Pa.; the McNeil Pipe & Foundry Co., Burlington, N. J.; Warren Foundry & Machine Co., Phillipsburg, N. J.; Reading Iron Co., Reading, Pa.; Buffalo Cast Iron Pipe Co., Buffalo, N. Y.; Utica Pipe & Foundry Co., Utica, N. Y.; Shickle, Harrison & Howard Iron Co., St. Louis, Mo.; Howard-Harrison Iron Co., Bessemer, Ala.; Anniston Pipe & Foundry Co., Anniston, Ala.; Dennis Long & Company, Louisville, Ky.; South Pittsburg pipe works, South Pittsburg, Tenn.; Chattanooga foundry & pipe works, Chattanooga, Tenn.; Addyston Pipe & Steel Co., Cincinnati, O.; Michigan Peninsular Car Mfg. Co., Detroit, Mich.; Ohio Pipe Co., Columbus, O.; Lake Shore foundry, Cleveland, O.; J. B. Clow & Sons, Chicago, Ills.; Jackson & Woodin Mfg. Co., Berwick, Pa.

That affiant's company has since December 28, 1894, contracted with a number of the above foundries to furnish pipe for the purposes of constructing water works in amounts as follows:

313 tons purchased from South Pittsburg pipe works, delivered at Warren, Ills.

23 tons purchased from Lake Shore foundry, delivered to us at Chadwick, Ills.



200 tons purchased from Addyston Pipe & Steel Co., delivered at Tolono, Ills.

160 tons purchased from Ohio Pipe Co., delivered at Plattville, Wis.

75 tons purchased from South Pittsburg pipe works, delivered at Doon, Iowa.

130 26 tons purchased from Lake Shore foundry, delivered at Lohrville, Iowa.

15 tons purchased from Ohio Pipe Co., delivered at Sublette, Ills.

168 tons purchased from South Pittsburg pipe works, delivered at Elkader, Iowa.

60 tons purchased from Chattanooga foundry & pipe works, delivered at Postville, Iowa.

30 tons purchased from Lake Shore foundry, delivered at New Hampton, Iowa.

25 tons purchased from South Pittsburg pipe works, delivered at Granville, Iowa.

35 tons purchased — Glamorgan Pipe & Foundry Co., delivered at Hiland, Wis.

108 tons purchased from Ohio Pipe Co., delivered at Dalton, Ills.

28 tons purchased from Addyston Pipe & Steel Co., delivered at Cissna Park, Ills.

116 tons purchased from Ohio Pipe Co., delivered at Pawhuska, Okla.

19 tons purchased from South Pittsburg pipe works, delivered at Lawler, Iowa.

44 tons purchased from Ohio Pipe Co., delivered at Merville, Iowa.

27 tons purchased from Addyston Pipe & Steel Co., delivered at Strawberry Point, Ills.

82 tons purchased from Ohio Pipe Co., delivered at Oxford, Iowa.

64 tons purchased from South Pittsburg pipe works, delivered at Juneau, Wis.

165 tons purchased from Ohio Pipe Co., delivered at Mauston, Wis.

44 tons purchased from Addyston Pipe & Steel Co., delivered at Orange City, Iowa.

In addition to the above purchases which amount to 1,827 tons, our branch offices at St. Paul, Omaha, Kansas City, etc., have during 1895 and 1896, purchased numerous bills of pipe, enjoying the benefit of competition from all the foundries mentioned above.

That the prices at which the above-mentioned pipe was furnished were the lowest that could be obtained from any of the pipe works in the United States, and from affiant's knowledge of the variations of the pig-iron market, the cost of manufacturing pipe, the capital required, &c., affiant considers said prices as fair, reasonable and satisfactory.

(Signed)

W. H. GARRETT.

131 Subscribed and sworn to before me by W. H. Garrett, this  
11th day of January, 1897.

[SEAL.]

(Signed)

WM. H. DE CAMP,

*Notary Public in and for Cook County, Illinois.*

*Affidavit of August Herrmann. Filed by Defendants.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the  
Eastern District of Tennessee.

UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF OHIO, }  
County of Hamilton, } ss:

Personally appeared before me the undersigned, a notary public in and for the county and State aforesaid, August Herrmann, who, being duly sworn, deposes and says as follows:

I am a citizen of Ohio, and president of the board of administration in the city of Cincinnati, and as such it was my business in April, 1896, to contract for and purchase a large quantity of cast-iron water pipe, being all the pipe that the city of Cincinnati would use during the year 1896. In accordance with the Ohio law, I advertised for bids for the furnishing of said pipe, and received bids from the Addyston Pipe & Steel Company, Lake Shore foundry, Dennis Long & Company, and other pipe manufacturers.

Affiant further says that so far as he knows, there was active competition among such pipe foundries to obtain the order, but that the Addyston Pipe & Steel Company was the lowest bidder, and obtained the contract at their price of \$23.00 per ton.

Affiant further says that taking into consideration that the city of Cincinnati did not specify any fixed quantity which they would require; that most of the pipe had to be delivered in the outskirts of the city, at considerable expense for hauling, and that the city took from twelve to eighteen months to pay their bills, that he considered the price made by the Addyston Pipe & Steel

132 Company was reasonable and satisfactory to the board of administration, and that there has been no objection raised thereto.

(Signed)

AUG. HERRMANN.

Sworn and subscribed to before me this 15 day of January, 1897.

[SEAL.]

(Signed)

ED. P. TYRRELL,

*Notary Public.*

*Affidavit of Casper Chisolm. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

STATE OF SOUTH CAROLINA, {  
County of Charleston. }

Personally appeared before me the undersigned, notary public for the State and county aforesaid, Casper Chisolm, who, being duly sworn, deposed as follows:

That he is superintendent of the Charleston Water Works Company of the city of Charleston. He states that he has since Dec. 28th, 1894, bought about seventy-eight tons (78) of cast-iron water-works pipe from said the Chattanooga foundry and pipe works of Chattanooga, Tennessee. This pipe was bought at a price acceptable to said Casper Chisolm based on previous experience from competitive prices received from R. D. Wood & Co. of Philadelphia, Penn., the Anniston Foundry & Pipe Company, of Anniston, and other manufacturers of pipe. This said pipe was to be delivered at Charleston, and was subject to the usual specifications, and that any pipe not conforming to said specifications was subject to rejection. In all cases pipe was to be delivered at Charleston, and any broken or rejected pipe was to be replaced by said Chattanooga foundry and pipe works. That the price charged him by said Chattanooga foundry and pipe works was to the best of his knowledge and belief and according to his information fair and reasonable and afforded no more than a reasonable profit in doing such work.

(Signed)

C. A. CHISOLM,  
Supt. Charleston Water Works.

Sworn to before me this 14th day of January, 1897.

[SEAL.]

(Signed)

E. S. VAUX,  
Notary Public.

133

*Affidavit of P. B. McKenzie. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

STATE OF ALABAMA, {  
County of Barbour. }

Personally appeared before me the undersigned, notary public, for the State and county aforesaid, P. B. McKenzie mayor of the city of Eufaula, Alabama, who being duly sworn, deposed as follows:

That he is mayor of the city of Eufaula, Alabama, he states that he has since December 28th, 1894, bought about (1,105) eleven hundred and five tons of cast-iron water pipe, and that he received bids from R. D. Wood & Co., of Philadelphia, Penn., and the Chattanooga foundry and pipe works of Chattanooga, Tennessee.

That said pipe was to be delivered at Eufaula, Alabama, freight prepaid and was to be subject to certain specifications, details of

which are attached hereto and that any pipe not conforming to said specifications was subject to rejection. In all cases pipe was to be delivered freight prepaid at Eufaula, Alabama, and any broken or rejected pipe was to be replaced by said Chattanooga foundry and pipe works. That the prices charged him by said Chattanooga foundry & pipe works was to the best of his knowledge and belief and according to his information fair and reasonable and afforded no more than a reasonable profit in doing such work.

(Signed)

P. B. McKENZIE.

Sworn and subscribed to before me this 9th day of January, 1897.

[SEAL.]

(Signed)

C. P. S. DANIEL,  
Notary Public.

### EXHIBIT TO P. B. McKENZIE'S AFFIDAVIT.

(Copy of Advertisement.)

#### Proposals for water works at Eufaula, Alabama.

Sealed proposals will be received by the mayor and city council of Eufaula, Alabama, until 2 p. m., April 23, 1896, for constructing a system of water works, and for furnishing the materials for the same. Works will embrace approximately 10½ miles of pipe, stand-pipe, and other appurtenances.

134 Plans and specifications will be on file, and may be seen at the office of the city clerk, and copies of specifications, forms, etc., may be obtained from the city clerk, after March 20, 1896.

The right is reserved to reject any, or all, bids.

P. B. McKENZIE, Mayor.

G. A. ROBERTS, City Clerk.

J. L. LUDLOW,  
Engineer, Winston, N. C.

#### Instructions to Bidders.

SECTION 1. All bids or proposals must be made upon the following conditions, viz: That the bidder will construct the system of water works of the city of Eufaula, Alabama, or such portion or portions of the works as may be awarded to him or them; or furnish such material as may be awarded to him or them, in full accordance with the general stipulations and with the plans, specifications and instructions of the engineer for a consideration, as follows, viz:

At the end of each month, during the progress of the work, the engineer shall make up an estimate of the work done and of materials furnished, and the amount due the contractor for such work or materials, based upon the prices named in his proposal, whereupon the mayor and city council of Eufaula, Alabama, will pay or cause to be paid, to the contractor, in legal-tender money of the

United States, such amount, less ten (10) per cent., which amount shall be held in reserve by the city council as an additional guarantee against poor workmanship, and, failure to comply with the contract as it may be awarded by the mayor and the city council.

When the work shall have been completed, or materials have been delivered, and formerly accepted by the city council, three-fourths ( $\frac{3}{4}$ ) of this reserve fund shall be paid to the contractor, the remainder to be still further reserved for the period of three (3) months, to cover the cost of repairing or replacing any poor workmanship that may be developed during that period, for which the contractor, or parties furnishing materials should be held responsible under the terms of this contract.

SEC. 2. All bids must be made on the printed forms hereto attached enclosed in a sealed envelope and directed to the mayor and city council of Eufaula, Alabama, and endorsed upon the outside of the envelope :

"Proposals for constructing a system of water works for the city of Eufaula, Alabama," or "Proposals for furnishing — to the city of Eufaula, Alabama."

SEC. 3. Each bid must be accompanied by a deposit of a  
135 certified check to the amount of \$1,000, if bid embraces entire contract ; \$500 if bid embraces entire contract excepting items *g*, *h*, *i*, *j*, *o*, and *q* ; \$500 if bid is only upon items *a*, *b*, *c*, *d*, *e*, *f*, *k* and *n* ; \$200 if bid is only upon items *g* and *h*, *i* and *j*, *l* and *m*, *o* and *p*, *q* and *r*, or upon either of these items separately, or upon item *n* alone. Parties submitting bids on more than one of these combinations shall deposit check sufficient to cover their entire bid in accordance with the above limitations.

SEC. 4. Bids shall state price of all items enumerated in the accompanying proposal schedule intended to be embraced and covered by the bid, said price to be in full for all labor, etc., required for the execution of the work, in accordance with the general plans and specifications and general stipulations of the engineer, and such instructions as he may give from time to time during the progress of the work, prices to be written in words and stated in figures in the spaces provided in the accompanying schedule.

SEC. 5. The estimated quantities named in the proposal schedule are not intended, nor to be considered by the contractor, as the actual quantities that may be required for the completion of the works ; but they are believed to be close approximations and will be considered as final quantities, only, for the purpose of making comparison of bids.

SEC. 6. The place of residence of each bidder must be given after his signature, which must be written in the blank space provided for that purpose in the accompanying form of proposal. When firms bid, the names of each of the members shall be signed, and the firm name added. When corporations bid, the names of the proper officers shall be signed, or their properly authorized agent.

SEC. 7. The intention of the mayor and city council is to let this work as a whole or in such parts as indicated in sec. 3, according as the best interests of the city may appear when the bids are all re-

ceived and compared; and the said mayor and city council hereby reserves the right to reject any and all bids, or any part or parts of any bid.

P. B. McKENZIE, *Mayor*.  
 M. L. RAMSER,  
 J. R. BARR,  
 T. PRUDEN,  
 G. H. DENT,  
 G. T. MARSH,  
 J. E. O'BRIEN,  
 C. C. SHILLMAN,  
 J. STERN,  
*Mayor and City Council.*

J. L. LUDLOW,  
*Engineer, Winston, N. C.*

136 *Proposal for Building Water Works and Furnishing Water-works Materials at Eufaula, Alabama.*

To the mayor and city council of Eufaula, Alabama:

Made by ———.

Residing at ———.

Dated ———, —.

The undersigned do ———, hereby declare that ——— he ———, the only person ——— interested in this proposal, and that no person other than named has any interest whatever in this proposal, and that it is made without any connection with any other person or persons making any other proposals for the same work, and that it is in all respects fair and without any collusion or fraud.

The undersigned also declare that ——— he ——— ha ——— carefully examined and fully understands the plans and specifications, and form of contract hereto annexed, and this form of proposal, and hereby proposes to furnish all the materials, implements, etc., and do all the work required to construct, finish and complete the water-works system in the city of Eufaula, Ala., or such portion or portions of the works as may be awarded to ———, or furnish such materials as may be awarded to ———, in accordance with the prices named in this our proposal, at ——— own proper cost and expenses, in a first-class workmanlike manner, and according to the best of ——— art and ability, and in accordance with the plans and drawings of your engineer, and with the foregoing instructions to bidders and the general conditions and specifications contained in the form of contract hereto annexed to such extent as they relate to or govern the obligations we herein propose to assume, and in accordance with such detail directions, plans, drawings and instructions as may be furnished by the engineer during the progress of the construction of the work at the following prices, viz:

*Items.*

(a.) Price per lineal foot for laying four (4) inch diameter pipe, including trenching and back-filling; placing and joining pipe,



valves and specials in the trench; leading, calking, etc., complete; and furnishing the necessary lead and gaskets for the work.

137

(\$—.)

Estimated quantity, 1,000 feet.

Total, \$—.

(b.) Price per lineal foot for laying six (6) inch diameter pipe, including trenching and back-filling; placing and joining pipe, valves and specials in the trench; leading, calking, etc., complete; and furnishing the necessary lead and gaskets for the work.

(\$—.)

Estimated quantity, 35,000 feet.

Total, \$—.

(c.) Price per lineal foot for laying eight (8) inch diameter pipe, including trenching and back-filling; placing and joining pipe, valves and specials, in the trench; leading, calking, etc., complete; and furnishing the necessary lead and gaskets for the work.

(\$—.)

Estimated quantity, 4,350 feet.

Total, \$—.

(d.) Price per lineal foot for laying ten (10) inch diameter pipe, including trenching and back-filling; placing and joining pipe, valves and specials in the trench; leading, calking, etc., complete; and furnishing the necessary lead and gaskets for the work.

(\$—.)

Estimated quantity, 15,200 feet.

Total, \$—.

5.

(e.) Price per lineal foot for laying twelve (12) inch diameter pipe, including trenching and back-filling; placing and joining pipe, valves and specials in the trench; leading, calking, etc., complete; and furnishing the necessary lead and gaskets for the work.

138

(\$—.)

Estimated quantity, 50 feet.

Total, \$—.

(f.) Price for setting and connecting hydrants, including laying the branch pipe, and setting valves where required by plans.

(\$—.)

Estimated number required, 85.

Total, \$—.

(g.) Price for furnishing hydrants, f. o. b. cars, at Eufaula, Alabama.

(\$—.)

Estimated number, 85.

Total, \$—.

Name and maker of hydrant — —.

(h.) Price for furnishing valves or gates, f. o. b. cars at Eufaula, Alabama, including extension boxes.

Four (4) inch valves at \$—.

Estimated number, 2.

Six (6) inch valves at \$—.

Estimated number, 50.

Eight (8) inch valves at \$—.

Estimated number, 5.

Ten (10) inch valves at \$—.

Estimated number, 8.

Twelve (12) inch valves at \$—.

Estimated number, 1.

Name of maker of valves — —.

Total, \$—.

(i.) Price per ton for furnishing cast-iron pipe f. o. b. at Eufaula, Alabama:

Four (4) inch diameter pipe @ \$—.

Estimated tons, 11.

Six (6) " " " @ \$—.

" " 580.

Eight (8) " " " @ \$—.

" " 96.

Ten (10) " " " @ \$—.

" " 456.

Twelve (12) " " " @ \$—.

" " 2.

Total, —.

Name of foundry and maker of pipe — —.

139 (j.) Price per ton for furnishing "specials," f. o. b. cars at Eufaula, Alabama.

(\$—.)

Estimated tons, 35.

Total, \$—.

Name of foundry and maker of specials — —.

(k.) Price for unloading from cars and properly distributing all of the materials included in the above items —.

(\$—.)

(l.) Price for building stand-pipe complete \$—.

(\$—.)

Name of company intending to construct and erect stand-pipe.

(m.) Price for building stand-pipe foundation \$—.

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(§—.)

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(n.) Price for building pumping station, complete, including smokestack.

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(§—.)

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(o.) Price for furnishing two (2) 1,000,000-gal. pumps, boiler feed-pump and feed-water heater, all complete, f. o. b. cars at Eufaula, Alabama.

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(§—.)

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Name or maker of pumps — — —.

General dimensions of pumps —.

---

140 (p.) Price for taking from cars, setting and connecting pumps, and feed-water heater, including all steam piping and fitting, complete, and pipe to suction basins and connections to force-main with proper foot and check valves; feed-pump to be properly connected, with full complement of valves for operating both or either boilers separately; all to be furnished with full supply of valves and other fittings necessary to place the entire pumping machinery in complete and proper order for operation, separately or together: —.

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(§—.)

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(q.) Price for furnishing three (3) 90 h. p. boilers, complete, f. o. b. cars at Eufaula, Alabama, —.

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(§—.)

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General dimensions of boilers and name of makers: — — —.

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(r.) Price for taking from cars, setting and connecting boilers, complete, including all brick and other materials needed for properly setting and putting same in complete and proper condition for firing and intended service:

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(§—.)

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(s.) Any other work not enumerated in this schedule, but required by plans and specifications, shall be considered as extra work. All extra work is to be estimated by the engineer, in accordance with article (G) of the form of contract hereto attached.

And — hereby agrees to enter into a contract within five (5) days from the date of your acceptance of this proposal, to begin, finish and complete said work, or to furnish said materials according to aforesaid plans, conditions, specifications, manner, etc., under which the bid is made, and in accordance with the contract form

hereto annexed, and within ten (10) days from the date of your acceptance of this proposal will furnish such sureties as shall be approved by the said mayor and city council, on an indemnifying bond for the faithful performance of such contract, the payment for materials contracted for, the payment of laborers' wages and liens which may arise therefrom; the amount of the bond to be fixed by said board, but in no event to be more than 40 per cent. of the amount of our award as it may appear by this proposal.

(NOTE.—Should contracts for material be awarded to manufacturers who are reliable and responsible incorporated companies, the requirement of an indemnity bond will be waived by the mayor and city council upon the execution of a satisfactory agreement to cover any delay or loss from failure to deliver same promptly in accordance with the contract to be entered into.)

In the default of the performance of any of these conditions on — part to be performed, the sum of \$— which — have this day deposited with the mayor, shall, at the option of said mayor and city council, be paid and delivered to the city of Eufaula, Alabama, as ascertained and liquidated damages for such default; otherwise the sum of \$— shall be returned to the undersigned.

Signature of person, firm or corporation making bid:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Post-office address.)

\_\_\_\_\_  
 \_\_\_\_\_

Dated — — —.

The full names and residences of all persons interested in this bid, as principals, are as follows:

(NOTE.—Give Christian names as well as surnames, and in case of corporations give name of president, treasurer and manager. The names of bidders will be made public; but the names of all parties interested with them, being required for the information and guidance of the mayor and city council only, will not be made public.)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The builder is required to state below what similar work he has done, and give reference that will enable the mayor and city council to judge of his business standing: —.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

STATE OF ALABAMA, }  
County of Barbour, } ss :

The undersigned, — — —, being sworn, say: that the declaration and matter stated in the foregoing proposals are in all respects true —.

Subscribed and sworn to before me, this — day of — A. D. 1896,  
at —.

(NOTE.—This affidavit need not be executed in submitting proposals, but may be required before award is made, according to the pleasure of the mayor and city council.)

(NOTE.—Should contract be awarded to embrace both the work of construction and furnishing materials, arrangements may be made whereby the city will pay for the materials directly to the parties furnishing them, upon a proper order to that effect given by the contractor.)

*Contract and Specifications for Building Water Works at Eufaula, Alabama.*

This agreement made and entered into this — day of —, A. D. one thousand eight hundred and ninety-six, by and between  
143 the city of Eufaula, Alabama, a municipal corporation created by an act of the legislature of the State of Alabama, in the county of Barbour, in said State, acting through and by its mayor and city council, by virtue of the authority vested in them by enactment of the legislature, party of the first part, and — — —

— — —  
— — —  
— — —  
— — —  
— — —

contractor- part- of the second part.

Witnesseth, that the said part- of the second part, in consideration of the covenants and agreements herein mutually entered into, and under penalty expressed in a bond bearing even date with these presents, and hereto annexed, do- for — — — and for — executors, administrators or assigns, covenant, promise and agree to and with the said mayor and city council, that — — — the said part- of the second part, shall and will furnish all the material, implements, etc., and do all the work required to construct, finish and complete the water-works system of the city of Eufaula, Alabama, or such portion or portions of the same as have been awarded to, and undertaken by us, as appears in the body of this contract under the head of items, at our own proper cost and expense, in a first-class, workmanlike manner, and according to the best of our art and ability, and in accordance with the foregoing instructions

to bidders and the general conditions and specifications herein contained and made a part of the agreement, and in accordance with such detail directions, plans, drawings and instructions as may be furnished and given by the engineer during the progress of the construction of the work, which directions, plans, drawings and instructions are, and are hereby made a part of this agreement.

*General Conditions of Contract.*

A. Under these conditions and accompanying plans and specifications, the contractor is required to furnish all material and labor required in the construction of a complete system of water works in the city of Eufaula, Ala., or such portions of the work as appear incorporated in the body of this contract under the head of items, in accordance with the plans and specifications herewith set forth and which are hereby made a part of this contract.

B. The work embraced in the contract shall be begun within fifteen (15) days after the contract has been awarded by the board; the work then to be carried on regularly and uninterruptedly with such force as to secure its completion within three (3) months thereafter, at the same time continuing the work at such points and with such rapidity as the engineer may require. But should work be delayed or interrupted by the said board it shall work an extension of time for the completion of the work equal to the time of such interruption or delay which shall be determined by the engineer, but such interruption or delay shall not constitute a claim for damages by the contractor against said city or board, either for direct loss, or for loss of anticipated profits.

C. The said contractor, party of the second part, hereby agrees that the said city, party of the first part, is hereby authorized to deduct and retain out of the moneys which may be due or become due to him, under this agreement, the sum of twenty-five dollars (\$25), which amount shall be and is hereby agreed upon as ascertained and liquidated damages, for each and every day the aforesaid work may be incomplete over and beyond the time herein stipulated for its completion, provided, however, that the said party of the first part shall have the right to extend the time for the completion of said work.

But neither any extension of time, for any reason, beyond that fixed herein for the completion of the work, nor the doing and acceptance of any part of the work called for by this contract, shall be deemed to be a waiver by the said board of the right to abrogate this contract for abandonment or delay, in the manner provided for in article U of this agreement.

D. The contractor shall start the works at and from such points as the engineer may from time to time direct, and observe his directions as to manner, completeness and rate of progress of the execution of the works.

E. The contractor, upon being so directed by the engineer, shall remove or reconstruct, at his own cost, any part or parts of the



works, in a manner satisfactory to the engineer, which may be decided as not having been done in accordance with his instructions.

F. The board (mayor and city council), through the engineer, shall have the right to make any alterations in the lines, plans, forms or quantity of the work herein contemplated, either before or after the commencement of the work.

145 If such alterations diminish the quantity of work to be done, they shall not constitute a claim for damages for anticipated profits. If such alterations shall increase the extent of the works, such increase shall be paid for upon the basis of prices stipulated in the contract schedule of price.

G. The contractor shall also do such extra work in connection with his contract as the engineer may direct in writing. It shall be done in a first-class manner, and under same requirements as other work contemplated in the contract, at a price to be fixed by the estimate of the engineer. The estimate to be based upon prices named in the proposal and contract, or from material and force account, allowing 10 to 20 per cent. profit, according to the nature of the work.

No claims will be allowed, however, for extra work, unless the same was done in pursuance of the aforesaid written order.

H. Should any dispute arise between the engineer and contractor as to the meaning of any instructions, plans, drawings, specifications, etc., in connection with the works, the decision of the engineer shall be final and conclusive.

I. The contractor shall observe and obey all town ordinances in relation to obstructing streets, keeping open passageways and protecting the same where exposed.

J. No person shall be employed on any part of the work where he may be considered by the engineer to be incompetent or disorderly. The engineer further reserves and is hereby granted the right of selecting persons to fill positions of trust and responsibility in connection with the pipe-laying, wherever, in his opinion, the proper construction of the work demands it.

K. The contractor shall employ no convict labor in the construction of these works. He shall, however, employ all home labor, except in such cases where experienced and skilled labor is required, as per the consent or direction of the engineer.

L. The contractor shall indemnify and save harmless the city of Eufaula, Alabama, and its mayor and city council from all suits or actions for any injury or damages sustained by any party or parties by or from causes under the control of the said contractor in the construction of the works, or any part thereof, or any negligence in guarding the same, or by or on account of any act or omission of the said contractor or his agents or employes.

## M.

*Specifications.**Source of supply.*

The source of supply shall be Barbour creek, at the point designated on the water-works map.

To properly control and utilize this water a timber crib dam six (6) feet in height shall be built across the creek, at a point to be designated by the engineer, making an impounding reservoir and suction basin.

A mechanical filter to intercept the sand and otherwise clarify the water, after plans to be furnished or approved by the engineer, shall also be established. The filter plant is to be of a sufficient capacity to clarify the water in its worst condition at the rate of one million (1,000,000) gallons per twenty-four hours, and to pass with partial clarification at the rate of one thousand gallons per minute in emergency cases.

*Pumping station.*

SECTION 1. The pumping station shall be at a point to be located by the engineer.

SEC. 2. It shall be a brick structure, with slate roof, of size and dimensions shown on plans. The brick shall be of the best local quality, all hard, sound and well burned, uniform in size, shape and color. They shall be laid with full shove joints, in lime and cement mortar (one part cement, two parts lime paste, and four parts sand), in a workmanlike manner, straight, level and plumb. Each brick shall be tapped to its bed, and all courses shall be well flushed; each sixth course shall be a header. Both inside and outside walls shall present well-finished surface, and be painted on the entire outside, and on the inside of pump-room; the inside of boiler-room to be covered with two coats of lime whitewash. Relieving arches shall be built over all door and window openings. The building shall be set on firm, unyielding foundation.

SEC. 3. The floor of the boiler-room shall be of select all hard brick, set close on edge on a four (4) inch bed of clean, dry sand; after setting floor, sand shall be swept into the joints and the brick well rammed to a tight bed, with a smooth surface, and then all joints shall be swept full of clean, dry sand.

SEC. 5. The floor joists and girders shall be of same material as floor; the joists shall be three by ten (3 x 10) inches, spaced 147 eighteen (18) inches between centers and freely cross-bridged; they shall not span more than twelve (12) feet. The floor shall be framed independent of pump foundation and shall not be attached thereto, in any manner.

SEC. 6. The roof shall be framed as shown on plans.

SEC. 7. All framing lumber shall be well-seasoned, long-leaf pine, free from large or loose knots, sap, shakes or any imperfections liable to impair its strength or durability.

SEC. 8. Door frames shall be of two (2) inch timber, riveted to re-

ceive the door, and shall have transoms where shown in plans. All frames to be primed before setting.

SEC. 9. All doors and windows shall be of dimensions shown on plans, and fitted with such locks, bolts, knobs and hinges as are appropriate to the character of the work.

SEC. 10. All window sash shall be one and three-quarters (1 $\frac{3}{4}$ ) inches thick, double hung with suitable cords, pulleys, cast weights and fastenings.

SEC. 11. All glass in windows and transoms shall be of the best quality of American single thick, well set with tin points and neatly puttied.

SEC. 12. The roof shall be covered with the best selected 12 x 18 inch Georgia slate, laid with a lap of three (3) inches; the slates shall be properly punched and trimmed, and each securely nailed with two (2) galvanized iron nails, to be covered up. The hips shall be mitred and put together with two (2) inch galvanized iron ridge-roll. All places requiring flashing shall be done with "I. C. Camare" roofing tin. Roof to be left water tight, clean and in good order, and kept in repair for one year.

SEC. 13. Suitable gutters shall be set along the eaves of the roof, as shown by drawings, and down spouts erected at the places required on the building, down spouts to be three (3) inches in diameter, with strainers at top and elbows near the ground.

SEC. 14. All wood-work, both interior and exterior, shall be painted with three (3) coats of lead and boiled linseed-oil paint, of such color as the engineer may direct.

SEC. 15. All the material and workmanship throughout the building to be first-class in every particular.

### Boilers.

There shall be three (3) horizontal return, tubular, smoke-extension boilers of 90 nominal horse-power capacity.

The material of which the boilers are made shall be 148 wrought iron of 48,000 pounds tensile-strength per square inch, or homogeneous steel of 60,000 pounds tensile-strength.

Each boiler shall have a heating surface of not less than 1,350 square feet, and 45 square feet of grate area. The grates and fire-box being suitable for burning bituminous coal.

Each boiler shall have a separate flue of No. 10 iron, with independent damper, leading to main flue of same iron, all to be of proper sectional area.

Each boiler shall be provided with the following castings and fittings, viz: Full arch front with double flue cleaning doors, and double firing and ash doors; door liners and fire liners, front and rear bearing bars, rear cleaning doors and frames with anchor rods; grate bars; rear covering bars; binder rods and stars to anchor front to the wall, and suitable wall brackets. Suitable safety valve, stop and check for feed, blow-off, three try-cocks, glass water gauge with stand-pipe fitted to boiler, steam gauge with syphon, and whistle. Each boiler to be provided with the following openings, viz.:

"Eclipse manhead" in front below and in rear above tubes, furnished with proper plates, bolts, arches, and gaskets.

Two (2) inch riveted flange blow-off opening on bottom of shell close to the backhead, and steam opening in dome threaded for — inch steam pipe.

Any details or fittings not herein specified shall be in accordance with the standard practice of reliable boiler-makers for boilers of this size and capacity.

The boiler shall be subjected to a hydrostatic test of 160 pounds, and when set shall be subjected under full steam to such tests as may be required by the Hartford Boiler Insurance Company to insure them, and certificate of such test and paid-up insurance policy for one year shall be furnished to the board.

#### Boiler setting.

The boilers shall be set in accordance with the Hartford's setting plans, in a thorough and complete workmanlike manner, after detail drawings to be approved by the engineer. Each boiler in a separate furnace with independent fronts and connections.

The top of each boiler shall be covered with a thick coating of asbestos cement, and a covering of sand four (4) inches deep on top of it.

The boiler shall be suitably piped to the feed-pump with proper valves for feeding both or either of the boilers.

149 The boilers shall be suitably piped to pumps with all necessary valves.

The main flue shall be properly connected to the smokestack.

#### Smokestack.

The smokestack shall be provided with and set upon a firm, unyielding foundation of depth and dimensions shown by drawings of the engineer. The foundations to be built of stone laid in cement mortar, or rich strong concrete.

The walls shall be thirty-nine and one-half (39½) inches thick at bottom, and twelve (12) inches thick at top. A circular arch of suitable size for breeching shall be turned in building stack.

A manhole two (2) feet in diameter, or two (2) feet square, shall be left near the bottom of the stack and provided with an iron door suitably hung.

The stack shall be built of brick of the same quality as required for the pumping station, laid in lime and cement mortar. It must be well, truly and thoroughly built and neatly finished by pointing all surface joints, and having suitable stone or metal coping at the top.

A fire-brick lining shall be set, when building stack, to extend from three (3) feet below to thirty (30) feet above the opening for breeching.

The dimensions of the stack shall be 110 feet in height above the foundation, with flue 44 inches square.

## Pumps.

The pumping machinery shall consist of two (2) compound duplex pumps; one (1) duplex boiler feed-pump and open-eater for feed-water.

The two pumps shall each have a capacity of 1,000,000 gallons per twenty-four hours against a pressure of 150 pounds, operating at a piston speed of 100 feet per minute with a steam pressure of 90 pounds, without any undue strain upon any parts of the pumps. The suction lift will be twenty (20) feet.

The steam cylinder shall be made of strong close-grained iron and of sufficient thickness to allow for rebor-ing and still have sufficient strength to perform the required service. They shall be covered with a suitable non-conducting material composed of black walnut strips, varnished, and secured by polished brass bands. The valves shall be of suitable material and number, and the motion such as to insure quiet seating and regularity of action.

150 The water cylinders shall be of strong, close-grained iron with removable linings of hard cast brass, and brass valve plates. The suction to be below and the delivery above the plungers. Air chambers of suitable size, made of strong, close-grained, iron shall surmount the water chambers above the delivery valves. The water cylinders shall be so arranged as to permit ready access to both suction and delivery valves.

All valve seats and valve guards shall be made of the best composition gum metal. The suction and discharge valves shall be rubber disks of suitable hardness and with suitable springs, and of proper size and number for the service intended.

The piston-rods shall be of best machinery or cold-rolled steel highly polished of suitable size and strength to meet the intended service without undue strain. The high and low pressure pistons and plungers on the same side of the pumps shall be coupled to the same piston-rods. The plungers shall be of brass, working in brass sleeves, fitted for suitable fibrous packing.

The suction and discharge openings shall be made for flange connections and of the largest size suitable to the size of the pumps. With these pumps there shall be furnished:

One (1) 8-inch-deep case brass water pressure gage.

One (1) 8-inch-deep case brass steam pressure gage.

Two (2) 8-inch-deep case brass revolution counters with automatic moving attachment; all to be suitably mounted on black walnut or other suitable frame, and each to have the proper openings and valves for connection to the machinery.

The feed-pumps shall be of the duplex pattern, the feed pump and heater to be of suitable size and dimensions for three (3) ninety (90) horse-power boilers.

With these pumps there shall be provided sufficient number of sight-feed lubricators and brass and glass oil cups, a full set of all special tools, spanners and wrenches, such as may be necessary for the proper care and adjustment of the machinery, and such as are properly included in a pumping outfit of this size and description.

All this machinery shall be thoroughly inspected and tested under full steam and load before being shipped, and a certified report of such inspection and test made to the engineer. Any details not mentioned in this specification shall be in accord with the standard practice for machinery of this class and description.

151

### Pump pit.

The pumps are to be placed in a pump pit 20 feet deep, and of ample dimensions for the machinery, bottom to be made of concrete 15 inches deep and side walls of brick 12 inches in thickness.

(NOTE.—Proposals will be entertained for vertical pumping engines of same capacity and general requirements as above set forth for horizontal pumps.)

### Pump setting.

The pumps shall be provided with and set upon brick or stone foundations, with stone finishing plate in not more than two pieces for each pump, the foundations to be of such size and dimension and laid in such manner as the engineer may direct or approve. Pumps to be securely anchored to foundations by anchor bolts and plates.

The force-main shall be properly connected to the pumps with an independent cut-off valve to each pump, and a suitable check-valve of proper size in the force-main.

The suction pipe shall be connected to the pumps and extended to the suction basin with independent cut-off valves to each pump, and suitable foot valve and strainer at the basin end.

The exhaust shall be properly connected to the heater, and independent exhaust pipe carried through the roof, all to have the necessary valves for each or both pumps to exhaust into the heater, or to exhaust into the atmosphere.

Any details not herein specified or overlooked are intended to be in full accord with the best practice for station and machinery of this kind and size.

### Pipe.

SECTION 1. The pipe shall be of the usual kind, cast-iron water pipe, known as "bell and spigot." Each pipe shall be twelve (12) feet in length from the bottom of bell to the end of the spigot. The form and dimensions of the bell and spigot ends shall be as marked upon and shown by drawings, to be furnished or approved by the engineer. All special castings shall be made in accordance with such drawings and instructions as will be given by the engineer.

SEC. 2. Every pipe and special casting shall have cast upon the outside the initial of the maker's name or the foundry mark, and the year in which it was made. Each piece of finished pipe shall be weighed by the manufacturer and the exact weight marked plainly on the inside of the pipe where it can be readily seen by the inspector.

SEC. 3. The shell shall be smooth and sound, without cold shuts,



lumps, swells, scales, blisters, sand holes, or other imperfections, truly cylindrical, of full diameters, and with interior and exterior surfaces concentric.

SEC. 4. The sheet shall be of uniform thickness throughout its entire length. Should the engineer find in any one place a variation in thickness of more than ten (10) per cent., either greater or less from that specified in the contract, such pipe shall be rejected.

SEC. 5. The weight of each pipe must correspond as nearly as possible to the standard named. Any pipe which falls short over five (5) per cent., of the standard weight shall be rejected, and no pipe shall be allowed or paid for that shall exceed three (3) per cent. of the standard weight. These requirements shall be determined by the weight of each pipe separately.

SEC. 6. The standard of dimensions and weights of pipe shall be in accordance with the following table, viz :

Diameter of pipe.	Weight of pipe per foot run.	Weight of pipe per length.
4 inch.....	22	264
6 inch.....	33	396
8 inch.....	43½	522
10 inch ...	60	720
12 inch.....	75	900

SEC. 7. The pipe shall be cast vertically, in dry sand molds, or flasks, and shall be of the several diameters named in these specifications.

SEC. 8. The pipe shall not be stripped and taken out of the pit while showing color of heat.

SEC. 9. Pipe shall be thoroughly cleaned both inside and outside, without the use of acid or other liquid.

SEC. 10. When the pipe is so cleaned it shall be heated to 300 deg. Fahr. and immersed in a bath of coal-pitch varnish of an equal temperature. The coal-pitch varnish is to be made from coal tar, distilled until the naptha is entirely removed and the material deodorized, to which sufficient oil is to be added to make a smooth coating, tough and tenacious when cold, and not brittle nor with any tendency to scale off.

153 SEC. 11. When pipe is removed from the bath, the coating shall fume freely, and set perfectly hard within one hour from the time of its removal.

SEC. 12. When coated and coating has thoroughly hardened, the pipe shall be subjected to a test by hydrostatic pressure of not less than three hundred (300) pounds, per square inch; and while under such pressure the pipe shall be subjected to an additional test by a series of blows, at various points throughout its entire length, with a three (3) pound hammer attached to a handle sixteen (16) inches

long. If any failure is shown in pipe during the test it shall be rejected.

SEC. 13. The metal shall be of the best quality for the purpose, made from what is commercially known as "neutral" pig iron, which shall have been made from iron ores without the admixture of cinder or other inferior metal. The pipe metal shall have a tensile strength of not less than seventeen thousand (17,000) pounds per square inch, and when cast into pipe, they shall be strong, tough, of sound, even grain, and of such density and texture as will permit its being easily cut and drilled by hand, without irregular fracture.

Chemical analysis of the pipe metal shall be furnished from time to time, should the engineer require it.

SEC. 14. Should the engineer have cause to believe that inferior metal was being used, all pipe from such iron shall be rejected until satisfactory evidence to the contrary shall have been furnished him.

SEC. 15. Test-bars shall be cast as often as the engineer shall deem necessary for his information, and if the tests do not come up to the requirements of section 17, all pipe from such iron shall be rejected.

SEC. 16. Test-bars shall be taken as required by section 15 and 18 and shall be twenty-six (26) inches long, two (2) inches wide and one (1) thick.

SEC. 17. Test-bars shall be tested for transverse strength when loaded in the center, twenty-four (24) inches between supports (narrow sides vertical) and shall carry a center breaking load of not less than nineteen hundred (1,900) pounds, and show a deflection of not less than one-quarter ( $\frac{1}{4}$ ) of an inch before breaking.

SEC. 18. The test-bars shall be cast as near as possible to the specified dimensions, without finishing up; but corrections shall be made for variations of width and thickness; and the corrected results must conform to the above requirements.

SEC. 19. The maker shall furnish the engineer two wrought-iron rings (male and female templates), the one showing outside  
154 diameter of the spigot end, and the other the inside diameter of the bell end of each sized pipe, and the said pipe of the various diameters shall conform to the respective templates.

SEC. 20. The engineer, or his authorized agent, shall be at liberty at all times to inspect the material in the foundry, and the moulding, casting and coating there.

Any material, mould or core, which, in his opinion, does not fully comply with these specifications, or the terms of the contract, shall not be used. All expenses connected with such inspection to be paid by the contractor.

SEC. 21. All pipe and castings contracted for must be delivered in all respects sound and conform fully to the contract. The inspection, or the absence of an inspector, will not relieve the contractor of any of his obligations in this respect, and any defective pipe or other casting, which may have passed the inspector at the works or elsewhere, will be at all times liable to rejection when discovered, until the final adjustment of the contract.

### Specials.

All specials shall fully conform in character, finish and quality to all the requirements specified for pipe.

They shall be of form and pattern to be approved by the engineer, and located as shown on plans, with one three-way special to each hydrant branch.

### Hydrants.

All hydrants shall be single-valve, double-nozzle, frost-proof, post hydrants, having a length of three and one-half ( $3\frac{1}{2}$ ) feet from the ground line to the bottom of connecting pipe. The nozzles shall be two and one-half ( $2\frac{1}{2}$ ) inches inside diameter, threaded outside for two and one-half ( $2\frac{1}{2}$ ) inch standard hose connection, made of suitable composition metal, well and accurately fitted to the body of the hydrant. The valve opening shall not be less than four (4) inches in diameter, and the stand-pipe of not less than four and one-half ( $4\frac{1}{2}$ ) inches internal diameter. The elbow shall be for a six (6) inch branch connection.

All bearings shall be made of composition gum metal, or brass, the stem to be of steel, and the workmanship throughout shall be accurate and substantial in every detail. The cast-iron parts under ground shall be coated same as cast-iron pipe above ground. The whole shall be neatly finished and painted with two coats of metallic paint of such color as the engineer may approve.

Hydrants shall be located as shown on plans.

155

### Valves.

The body of the valves shall comply in all respects with the specifications for pipe, strong, tough, of even texture and possess a tensile strength of at least 18,000 pounds per square inch; they shall be tested to a hydrostatic pressure of not less than 300 pounds per square inch on each gate, without hissing, before leaving the factory, and the cast body shall be coated as specified for pipes.

The disks or gates, shall either be brass, composition gum metal, or composition faced at all bearing points; the seats upon which they press in closing shall be of the same metal well and firmly set and joined with cast parts.

The spindles, nuts, stuffing boxes and all the working parts shall be of first quality composition metal, well fitted in a thorough and workmanlike manner. All valves to have double disks.

The valve boxes shall be of cast iron coated and of such dimensions and patterns as may be approved by the engineer. The covers to have cast on the top the words "Eufaula water works" or the initials "E. W. W."

Valves shall be located as shown on plans, and shall be same size as pipe line on which they are set.

### Specifications for stand-pipe.

1. The stand-pipe shall be seventy-five (75) feet in height above foundation, and thirty (30) feet internal diameter.

2. The materials of which the stand-pipe shall be built, shall be good, sound rolled iron plate, having a tensil-strength of not less than forty-eight thousand (48,000) pounds per square inch of section. Elastic limit twenty-four thousand (24,000) pounds. Elongation not less than fifteen (15) per cent. in a full section of test-piece eight (8) inches long, and on examination show no signs of inferior workmanship or material. Each plate shall be stamped with the name of the manufacturer and its tensil-strength.

3. Should the engineer so desire the contractor shall weigh each plate and test them for tensil-strength, and should any plate fail to show the proper weight for their thickness, or fail to stand the test for tensil-strength for 48,000 pounds per square inch, or show in any way that they have been imperfectly rolled or having any other material imperfections, they shall not be placed in the stand-pipe.

4. The plate shall be of sufficient width to build five (5) 156 feet of stand-pipe, clear of lap, and of such length that not more than ten (10) plates will be required to build a complete course, all plates to be of uniform length.

5. The thickness of plates shall be as follows, viz: Beginning at the bottom: Two (2) courses eleven-sixteenths ( $\frac{11}{16}$ ) inch thick, two (2) courses ten-sixteenths ( $\frac{10}{16}$ ) inch thick, one (1) course nine-sixteenths ( $\frac{9}{16}$ ) inch thick, one course eight-sixteenths ( $\frac{8}{16}$ ) inch thick, two courses seven-sixteenths ( $\frac{7}{16}$ ) inch thick, one course six-sixteenths ( $\frac{6}{16}$ ) inch thick, one course five-sixteenths ( $\frac{5}{16}$ ) inch thick, and the remaining five (5) courses four-sixteenths ( $\frac{4}{16}$ ) inch thick.

6. All horizontal seams shall be single riveted.

7. All vertical seams with the exceptions of three (3) courses beginning at the top, shall be double riveted, staggered.

8. The diameter of the rivets shall be as follows, viz: Beginning at the base the rivets of the first three (3) courses shall be one (1) inch diameter, the next three (3) courses seven-eighths ( $\frac{7}{8}$ ) inch diameter, the next three (3) courses three-quarters ( $\frac{3}{4}$ ) inch diameter, the next three courses five-eighths ( $\frac{5}{8}$ ) inch diameter, the remaining three courses one-half ( $\frac{1}{2}$ ) inch diameter.

9. All rivets to have neatly finished and full hemispherical heads concentric to rivet holes, of uniform size for the same rivets throughout the work.

When driven and headed they must completely fill the holes and thoroughly pinch the riveted plates together. All loose or imperfectly driven rivets to be replaced by sound ones.

10. No rivet hole shall be more than one-sixteenth ( $\frac{1}{16}$ ) larger and not less in diameter than the rivet specified for that position.

All rivet holes are to be so accurately spaced and drilled or punched that when the plates to be riveted are matched up, a cold rivet of the size intended for them can generally be passed through without reaming or straining the iron by drifting—occasional variations must be corrected by reaming. In all cases the burrs must be removed by a slightly countersinking the edges of the holes.

The details as to pitch of rivets and lap of joints must be in accordance with standard practice, and approved by the engineer.

11. The foundation of stand-pipe shall be made of concrete (1, 2 and 4) in twelve (12) inch layers and well rammed; thirty-two (32) feet diameter at top and forty (40) feet diameter at bottom, and five (5) feet deep.

157 12. A twelve (12) inch pipe shall be set in stand-pipe while foundation is building, to be connected to system of street mains as shown by plans.

13. The bottom of the stand-pipe shall be made of wrought iron, as follows, viz: It shall be circumscribed by a six (6) by six (6) by three-quarters ( $\frac{3}{4}$ ) inch angle bent to a proper radius, to which the lower ring and the bottom are to be riveted with one (1) inch rivets, the angle to be on inside of pipe, with all bottom flush. The bottom proper shall be of one-half ( $\frac{1}{2}$ ) inch plate in as few pieces as practicable, and made up with "butt and strap" joints, using three-quarter ( $\frac{3}{4}$ ) inch rivets. The bottom shall be placed in position upon a bed of strong cement mortar not less than two (2) inches thick.

14. A four (4) by four (4) and one-half ( $\frac{1}{2}$ ) inch angle shall be placed around top of stand-pipe on the inside and riveted to the top course in same manner as first horizontal joint below.

15. The entire inside of pipe and under side of bottom, shall be given two (2) coats of asphaltum varnish, and entire outside three (3) coats of the best metallic paint.

16. The plan of constructing pipe shall be that known as "Taper rings" (bottom out and top in). The rivets are all to be driven from the inside, and the calking also to be done from the inside.

17. The stand-pipe is to be provided with the following fittings, viz: (a) manhole, complete, located near the base, (b) wrought-iron ladder on outside, from the top to within twelve (12) feet of base and to be of neat and substantial pattern, (c) three (3) inch overflow pipe to extend from near top to the ground, (d) float-gauge attached to an indicator on the outside of pipe to designate the amount of water in the pipe, (e) an electrical alarm to indicate at the pumping station when the pipe is full of water and when it is drawn off to a depth of forty (40) feet, (f) cap the summit of the pipe with a cornice and railing.

18. All rivets throughout stand-pipe shall be "Burden" rivets, all material and workmanship throughout stand-pipe shall be in strict accord with the best standard practice.

### *Specifications for Pipe-laying.*

SECTION 1. The trenches shall be opened on lines given by the engineer. They shall be of such depth that the top of the pipe shall be two and one-half ( $2\frac{1}{2}$ ) feet below the street surface. They shall be two (2) to two and a half ( $2\frac{1}{2}$ ) feet in width.

158 Joint holes under each joint shall not be less than six (6) inches below bottom of bell and two (2) feet long, and give ample room for thorough calking.

SEC. 2. The materials excavated in trenching shall be banked on the side of the trench, and so kept trimmed as to leave a clear foot-

passageway between the banks and trench, and to be of the least possible inconvenience to the traveling public.

SEC. 3. No excavated or other materials shall be placed so as to obstruct any gutter, but special care must be taken not to obstruct the free passage of surface water along the gutters.

SEC. 4. All water-courses and drains interrupted in the progress of the works, shall be restored to as good condition as found in the beginning.

SEC. 5. Suitable barriers shall be placed around all excavations, and sufficient signals maintained at night, to prevent any accident to street passengers.

SEC. 6. Without written permission of the engineer, not more than five hundred (500) feet of trench shall be opened in advance of the completed line in any section of the works.

SEC. 7. All the responsibility for the entire works, and accidents occurring therewith, shall rest with the contractor building the works, until its completion and acceptance.

SEC. 8. At the time of laying, all pipe must be thoroughly cleaned of all earth or rubbish. The spigot of the pipe shall be so adjusted to the bell as to give a uniform lead space all round. Gaskets of clean, sound hemp yarn, braided and tightly driven, shall be used to pack the joints before leading. Depth of lead in joint to be not less than one and three-quarters ( $1\frac{3}{4}$ ) inches; the lead used shall be of the best quality, prime and soft. Before running the lead, the joints shall be carefully wiped out to make them clean and dry. The joints shall be run full at one pouring. The caulking shall be faithfully executed. The lead after being driven, shall be cleaned off flush with the face of the bell. Every open end of a pipe shall be plugged or closed before leaving the work for the night.

SEC. 9. Valves, hydrants and special castings will be placed as the engineer directs, with special care to guard against uneven setting. An iron extension box shall be set over each gate or valve. These boxes shall be set centrally over the gate stem and shall stand plumb and true, and shall have a firm bedding with the earth well packed around them.

159 SEC. 10. The hydrants shall be set on a stone slab of two (2) square feet surface and six (6) inches thick and be filled around on three sides with broken stone to the height or depth of not less than fourteen (14) inches above the slab. The hydrants must be set truly vertical, and the contractor shall provide a plumb, fitted to the column of the hydrant to accomplish this if required by the engineer.

SEC. 11. All stop-valves at street intersections to be set in a line with the line of property, unless otherwise ordered by the engineer.

SEC. 12. After the pipe has been laid and the joints run and driven, the trenches shall be refilled in layers of not more than twelve (12) inches, and tamped with hand rammers weighing not less than twenty (20) pounds, and not more than eight (8) inches diameter at lower end. In refilling and ramming the earth in the



trenches there shall be not more than three shovellers to one rammer.

SEC. 13. The manner of laying the pipe and setting the valves, hydrants and specials, if not herein specified, shall be at the discretion of the engineer, and his instructions in such matters shall be received by the contractor for pipe-laying, and when not in conflict therewith shall have the same force as this specification.

N. The engineer reserves and is hereby granted the right, and is hereby authorized, to appoint such person or persons as he may deem proper to inspect the work done and materials furnished under this agreement, and see that the said work and materials conform in every respect to the plans, specifications and instructions; and the contractor hereby agrees that said inspectors shall be afforded all proper facilities for discharging the duties assigned them.

O. To prevent all disputes and litigation, it is further agreed by and between the parties to this contract, that the engineer shall be referee in all cases, to determine the amount, quality, acceptability and fitness of the several kinds of work which are to be paid for under this contract, and to decide all questions which may arise relative to the fulfillment of said contract on the part of the contractor; and his estimates and decisions shall be final and conclusive; and such estimate or decision, in case any question shall arise, shall be a condition precedent to the right of said contractor to receive any money under this agreement.

P. When the words "board" or "mayor and city council" is or are used in the plans, specifications, etc., in connection with  
160 this work, it shall be held to mean the mayor and city council of the city of Eufaula, Alabama, the subscribing party of the first part to this contract.

Whenever the word "city" is used it shall be held to mean the city of Eufaula, in the county of Barbour, and State of Alabama.

Whenever the word "engineer" is used, it shall be held to mean J. L. Ludlow, C. E., the constructing engineer or his authorized assistant.

Whenever the word "contractor" is used, it shall be held to mean either any contractor or firm of contractors, or any member of the firm, or any corporation or firm contracting to perform the works herein specified, viz., the subscribing party of the second part to this agreement, or their authorized agent.

Q. And the said party of the first part hereby agrees to pay, and the said party of the second part hereby agrees to receive the following prices in full compensation for furnishing material and for use of tools, machinery and other implements, and for all labor in moving material and executing all the work contemplated in this contract; also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen obstruction or difficulties which may be encountered in prosecution of the same and for all risks of every description connected with the works; also for the expenses incurred by, or in consequence of, the suspension or discontinuance of said work as herein specified, and

for well and faithfully completing the whole work in the manner and according to the plans and specifications and requirements of the said engineer under them.

And it is further understood and hereby mutually agreed that the payments herein contemplated shall be made in cash, in accordance with article W. of this agreement; prices are as follows, to wit:

*Items.*

(a.) For laying — feet of four (4) inch diameter pipe, including trenching and back-filling, placing and joining pipe, valves and specials in the trench; leading, caulking, &c., complete, and for furnishing the necessary lead and gaskets for the work.

— — (\$—).

Price per lineal foot \$—.

161 (b.) For laying — feet of six (6) inch diameter pipe, including trenching and back-filling, placing and joining pipes, valves and specials in the trench, leading, caulking, &c., complete, and for furnishing the necessary lead and gaskets for the work.

— — (\$—).

Price per lineal foot \$—.

(c) For laying — feet of eight (8) inch diameter pipe, including trenching and back-filling, placing and joining pipes, valves and specials in the trench, leading, caulking, &c., complete, and furnishing the necessary lead and gaskets for the work.

— — (\$—).

Price per lineal foot \$—.

(d.) For laying — feet of ten (10) inch diameter pipe, including trenching and back-filling, placing and joining pipes, valves and specials in the trench, leading, caulking, &c., complete, and for furnishing the necessary lead and gaskets for the work.

— — (\$—).

Price per lineal foot \$—.

(e.) For laying — feet of twelve (12) inch diameter pipe, including trenching and back-filling, placing and joining pipes, valves and specials in the trench, leading, caulking, &c., complete, and for furnishing the necessary lead and gaskets for the work.

— — (\$—).

Price per lineal foot \$—.

(f.) For setting and connecting — hydrants, including the branch pipe and valves where required by the plans.

— — (\$—).

Price per hydrant \$—.

(g.) For furnishing — hydrants, f. o. b. cars at Eufaula, Alabama.  
 162 — — (\$—).  
 Price per hydrant \$—.  
 Name of maker of hydrant — —.

(h.) For furnishing valves, including extension boxes, f. o. b. cars at Eufaula, Alabama, as follows:  
 — four (4) inch valves, \$—. Price each, \$—.  
 — six (6) inch valves, \$—. Price each, \$—.  
 — eight (8) inch valves, \$—. Price each, \$—.  
 — ten (10) inch valves, \$—. Price each, \$—.  
 — twelve (12) inch valves, \$—. Price each, \$—.  
 Total, \$—.  
 Name of maker of valves — —.

(i.) For furnishing iron pipe f. o. b. cars at Eufaula, Ala.  
 — tons four (4) inch diameter pipe, \$—. Price per ton, \$—.  
 — tons six (6) inch diameter pipe, \$—. Price per ton, \$—.  
 — tons eight (8) inch diameter pipe, \$—. Price per ton, \$—.  
 — tons ten (10) inch diameter pipe, \$—. Price per ton, \$—.  
 — tons twelve (12) inch diameter pipe, \$—. Price per ton, \$—.  
 Total, \$—.  
 Name of foundry or maker of pipe — —.

(j.) For furnishing — tons of "specials," f. o. b. cars at Eufaula, Ala.  
 — — (\$—).  
 Price per ton \$—.  
 Name of foundry or maker — —.

(k.) For unloading from cars and properly distributing all of the materials included in the above items:  
 — — (\$—).

(l.) For building stand-pipe complete:  
 — — (\$—).

163 (m.) For building stand-pipe foundation:  
 — — (\$—).

(n.) For building pumping station, complete, including smoke-stack:  
 — — (\$—).

(o.) For furnishing two (2) one-million (1,000,000) gal. pumps, boiler, feed-pump and feed-water heater, all complete, f. o. b. cars at Eufaula, Ala.:

— — (§—).

Name or maker of pumps — —.

(p.) For setting and connecting pumps, and feed-water heater, including all steam piping and fitting complete; pipe to suction basin and connection to force-main with proper foot and check valves; feed-pump properly connected with full complement of valves for operating both or either boiler separately, all furnished with full supply of valves and other fittings necessary to place the entire pumping machinery in complete and proper order for operation separately or together.

— — (§—).

Complete f. o. b. cars, at Eufaula, Alabama.

(q.) For furnishing three (3) ninety (90) h. p. boilers.

— — (§—).

(r.) For setting three (3) ninety (90) h. p. boilers including all brick and other materials needed; and putting the boilers in complete and proper condition for firing and intended service.

— — (§—).

164 All other work not enumerated in this schedule, but required by plans and specifications, shall be considered as extra work.

All extra work shall be estimated by the engineer in accordance with article G of this contract.

R. It is hereby understood and agreed by both parties to this contract that the prices and amounts to be paid under this contract refer simply to the quantities of work which shall be done, as the final measurements of the work may prove them to be, the monthly estimates presented being but approximate; and that no claims growing out of misconception of the quantities or kinds of work, or of any errors in the approximate statements of them, in the monthly estimates, are to be made, or be allowed or considered valid.

S. The said contractor, party of the second part, further agrees that he will give his personal attention to the fulfillment of this contract; will not sublet the aforesaid work, but will keep the same under his control; and will not assign by power of attorney, or otherwise, any portion of the said work, unless by previous consent of the said party of the first part, to be signified by proper endorsement on this agreement.

T. The said contractor, party of the second part, further agrees to be responsible for the entire work enumerated in — contract, until its completion and final acceptance; and that any unfaithful or imperfect work, or work that may become damaged from any cause, that may be discovered at any time before such completion and acceptance, shall be removed and replaced by good and satisfactory work, without charge, immediately upon the requirement of the engineer, notwithstanding it may have been overlooked by the proper inspector and estimated. It is fully understood by the con-

tractor that the inspection of the work shall not relieve him of any obligation to do sound and reliable work as herein prescribed, and that any omission to disapprove of any work by the engineer, at or before the time of a monthly or other estimate, shall not be construed to be an acceptance of any defective work.

U. The said contractor further agrees that if the work to be done under this agreement shall be abandoned, or if this contract shall be assigned by the said contractor otherwise than as herein specified in article "S" of this agreement, or if at any time the engineer shall be of the opinion, and shall so certify in writing, that the said work

is unnecessary or unreasonably delayed, or that the said contractor is willfully violating any of the conditions or agreements of this contract, or is not executing said contract in good faith, or is not making such progress in the execution of the work as to indicate its completion within the required time, the said board, party of the first part, shall have the power to notify the said contractor to discontinue all work, or any part thereof, under this contract and thereupon the said contractor shall discontinue said work or such part thereof as the said board may designate, and the said board shall thereupon have the power, by contract, or otherwise, as it may determine, to employ such persons and obtain such animals, carts, wagons, implements and tools as the board may deem necessary to work at and to be used to complete the work herein described, or such part of it as the board may deem necessary; and to use such implements, tools and materials of every description as may be found upon the line of said works, both such as enter into the completed work and such as are necessarily used in and about the same in the course of construction, and to secure other material for the completion of the same; and to charge the expense of said labor and material, animals, carts, wagons, implements and tools to the said contractor; and the expense so charged shall be conducted and paid by said board out of such moneys as may be either due, or may at any time thereafter become due, to the said contractor, under this contract, or any part thereof; and in case such expense is less than the sum which would have been payable under this contract if the same had been completed by the said contractor, then the said contractor shall be entitled to receive the difference; and in case such expense shall exceed the sum which would have been payable under this contract if the same had been completed by the said contractor, then the said contractor shall pay the amount of such excess to the said board, on notice from the board of the excess due; but such excess shall not exceed the amount owed by said board, under this contract, at the time said contractor is notified to discontinue said work or any part thereof, plus the amount of the bond executed by said contractor for the performance of this contract.

V. The contractor further agrees that he will and concurrent with this contract does, execute a bond in the penal sum of \$— in such form and with such sureties as shall be approved by said mayor and city council of the city of Eufaula, Alabama, condition to indemnify and save harmless, said city and said board, from all

suits, actions or proceedings of every name or description, in law if in equity, brought against said city or said board, or both or any officer or officers, agents or servants thereof, for or on account of any injuries or damages received or sustained by any person, structure or property by or from said contractor, his servants or agents, in the prosecution of the work; or by or in consequence of any negligence in guarding the same; or by or on account of any omission of said contractor, or his servants or agents; and, for the faithful performance of this contract and the payment of all laborer's wages, by said contractor.

W. In order to enable the contractor to prosecute the work advantageously, it is hereby mutually agreed that the engineer shall, once a month, make an approximate estimate in writing of the amount of work done and the materials furnished, and of the relative value thereof according to the terms of and the prices named in this contract, and the engineer may make such allowance in the said monthly estimates as he may deem reasonable on account of the works having been more or less difficult than the average of this contract. But it is expressly understood that the said monthly estimate shall only be made when the work progresses in accordance with the provisions of this contract and specifications. Upon each such monthly estimate being made, the board shall pay or cause to be paid to the contractor such amount less ten (10) per cent. which amount shall be held in reserve by the board as an additional guarantee against poor workmanship and failure to comply with the whole contract as awarded by the board.

When the work shall be completed and when, in the opinion of the engineer, this contract shall be completely performed, he shall so certify in writing to the board, and shall proceed with reasonable diligence to measure up the work and prepare his final estimate of the same and present said final estimate in writing to the said board; whereupon the board, mayor and city council shall pay or cause to be paid, to the contractor, in legal-tender money of the United States, such amount less all previous payments which have been made as herein provided for by monthly estimates, and less two and one-half (2½) per cent. of the entire final estimates which shall be reserved by the board for the period of three (3) months to cover cost of repairing or replacing any poor workmanship that may be developed during that period, for which the contractor should be responsible under the terms of this contract.

X. And the said contractor hereby further agree- that — shall not be entitled to demand or receive payment except in the manner set forth in this agreement; and further agree- that he will produce full release of claims from all persons who have furnished materials or labor for the works, whenever the board may require it, and that the payment of the final amount due under this contract, and any alterations of the same, shall release the city of Eufaula, Alabama, and the mayor and city council, from any and all claims or liabilities on account of work performed and materials furnished under this contract or any alterations thereof.



Y. It is hereby mutually agreed that the plans and drawings prepared by the engineer for the work herein contemplated, and which may hereafter be prepared in accordance with this agreement as showing more particularly the details of the work to be done, are, and are held, to be, a controlling part of this contract.

*Further Agreements.*

Z. The contractor hereby certifies and agrees that he has read each and every clause of this contract, and fully understands the meaning of the same, and that he will comply with all the terms, covenants and agreements herein set forth.

This agreement and bond shall be executed in triplicate, one copy to be delivered to the contractor, and two copies to be retained by the board.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

The board or mayor and city council, by the mayor and city clerk, acting under and by authority in them vested by \_\_\_\_\_ and the contractor, by such duly authorized officers or individuals, of the contracting corporation or firm as may be required by law, and by said board.

_____	[SEAL.]
_____	[SEAL.]
_____	[SEAL.]
_____	[SEAL.]
_____	[SEAL.]

Signed and sealed in the presence of—  
\_\_\_\_\_

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*(Acknowledgment for Mayor.)*

STATE OF ALABAMA, } ss:  
County of Barbour, City of Eufaula,

On this — day of —, 1896, before me, the subscriber hereto, personally appeared —, to me known and known to me, to be the mayor of the city of Eufaula, Alabama, described in and who executed the foregoing instrument, and he duly acknowledged that he executed the same, for and on behalf of the city council of said city.

*(Acknowledgment for City Clerk.)*

STATE OF ALABAMA, } ss:  
County of Barbour, City of Eufaula,

On this — day of —, 1896, before me, the subscriber hereto, personally appeared —, to me known and known to me, to be the city clerk of the city of Eufaula, Alabama, described in and

who executed the foregoing instrument, and he duly acknowledged that he executed the same, for and on behalf of the city council of said city.

*(Acknowledgment for Contracting Company by Its President.)*

STATE OF ALABAMA, }  
County of Barbour, City of Eufaula, } ss:

On this — day of —, 1896, before me, the subscriber, personally appeared —, to me personally known, who being by me duly sworn, did depose and say: I am president of —, and the seal affixed to the foregoing instrument is the corporate seal of said corporation, said instrument was signed and sealed by me on behalf of said corporation by authority of the board of directors and the said — as such president, duly acknowledged the said instrument to be the free act and deed of said corporation.

*(Acknowledgment for Contracting Company by Its Secretary.)*

STATE OF ALABAMA, }  
County of Barbour, City of Eufaula, } ss:

On this — day of —, 1896, before me, the subscriber, 169 personally appeared —, to me personally known, who being by me duly sworn, did depose and say: I am the secretary of —, the seal affixed to the foregoing instrument is the corporate seal of said corporation; said instrument was signed and sealed by me on behalf of said corporation by authority of the board of directors, and the said —, as such secretary, duly acknowledged said instrument to be the free act and deed of said corporation.

*(Acknowledgment for Contractor in Person.)*

STATE OF ALABAMA, }  
County of Barbour, City of Eufaula, } ss:

On this — day of —, 1896, before me, the subscriber, personally appeared —, to me known to be the same person-described in, and who executed the foregoing instrument, and —he— duly acknowledged that —he— executed the same.

STATE OF ALABAMA, }  
County of Barbour, City of Eufaula, } ss:

On this — day of —, 1896, before me, the subscriber, personally appeared —, to me known to be the same person-described in, and who executed the foregoing instrument, and —he— duly acknowledged that —he— executed the same.

*Contract Bond.*

Know all men by these presents, that we, — — —, principal-, residing in — — —, and — — —, sureties, are held and firmly bound unto the mayor and city council of the city of Eufaula, Alabama, in the penal sum of — dollars (\$—) lawful money of the United States of America, to be paid to the said mayor and city council, its successors or assigns, for which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

170 Sealed with our seals this — day of — — —, in the year of our Lord one thousand eight hundred and ninety-six.

The condition of this bond is such, that, whereas, the said — — —, principal-, ha- entered into a contract with said mayor and city council, bearing date the — day of — — —, 1896, hereto annexed.

Now, therefore, if the above-bounden — — —, heirs, executors, administrators, successors or assigns, shall, in all things, stand to, and abide by, and well and truly keep and perform the terms, covenants, conditions and agreements, in said contract contained on — part to be kept and performed, and each of them, and in the manner and form therein specified, and indemnify and save harmless said city and the mayor and city council thereof, and its officers and agents as provided in said contract, then this obligation shall be null and void, otherwise to be and remain in full force and virtue.

In witness whereof, the parties have hereunto set their hands and seals this — day of — — —, one thousand eight hundred and ninety-six.

— — —.	[SEAL.]
— — —.	[SEAL.]
— — —.	[SEAL.]
— — —.	[SEAL.]
— — —.	[SEAL.]

Signed in the presence of—

— — —.

*(Acknowledgment for a Surety Company or Other Corporation.)*

STATE OF — — —, } ss:  
County of — — —, }

On this — day of — — —, 1896, before me, the subscriber, personally appeared — — —, to me personally known, who, being  
171 duly sworn, did depose and say: I am the president of the — — —; the seal affixed to the foregoing instrument is the corporate seal of said corporation; said instrument was signed and sealed by me on behalf of said corporation, by authority of its board of directors; and the said — — —, as such president, duly acknowledged said instrument to be the free act and deed of said corporation.

*(Acknowledgment for Individuals.)*

STATE OF —, } ss:  
County of —, }

On this — day of —, 1896, before me, the subscriber, personally appeared —, to me known to be the same person-described in, and who executed the foregoing instrument, and they severally duly acknowledged that they executed the same.

*(Justification for Personal Sureties.)*

STATE OF —, } ss:  
County of —, }

— —, sureties within named, being duly sworn, deposes and say, and each for himself says:

That he is worth the sum of — dollars, over and above all debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

Subscribed and sworn to before me this — day of —, 1896.

STATE OF —, } ss:  
County of —, }

— —, sureties within named, being duly sworn, depose and say, and each for himself says: That he is worth the sum of — dollars, over and above all debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under execution.

Subscribed and sworn to before me this — day of —, 1896.

172 STATE OF —, } ss:  
County of —, }

— —, sureties within named, being duly sworn, deposes and say, and each for himself says: That he is worth the sum of — dollars, over and above all debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under execution.

Subscribed and sworn to before me this — day of —, 1896.

*(Justification for a Surety Company or Other Corporation.)*

STATE OF —, } ss:  
County of —, }

— —, being duly sworn, deposes and says:

I am the president of — a company duly incorporated and organized under the laws of the State of —, for the purpose of furnishing bonds and sureties to or for any person, firm or corporation desiring the same, said — is worth the sum of — dollars, over and above all debts now existing against said — either by way of bond,

mortgage, or certificate of indebtedness, and exclusive of property exempt by law from levy and sale under execution.

Subscribed and sworn to before me this — day of —, 1896.

— have examined the foregoing contracts, bonds, acknowledgments and justifications, and hereby certify that the same are in proper and legal form.

This — day of —, 1896.

\_\_\_\_\_,  
City Attorney.

(Endorsed:) Water-works specifications for the city of Eufaula, Alabama, and forms of proposals, instructions to bidders, form of contract, etc. Mayor and city council: P. B. McKenzie, mayor; M. L. Ramser, J. R. Barr, T. Pruden, G. H. Dent, G. T. Marsh, J. E. O'Brien, C. C. Skillman, J. Stern. Engineer, J. L. Ludlow, Winston, N. C.

173 *Affidavit of E. L. Bierbower. Filed by Defendants.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States — Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE AND STEEL CO. ET AL. }

STATE OF NEBRASKA, }  
County of Douglas. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared E. L. Bierbower, who being duly sworn deposed as follows:

I am a citizen of Omaha, State of Nebraska, and general manager of the Omaha Water Company. I was formerly one of the two receivers appointed by the U. S. court for the American Water Works Company of Omaha, Nebraska, which was recognized in the summer of 1896 and is now known as the Omaha Water Company. In 1895 the receivers decided to place a contract for its supply of pipe for that year, the business of said company being to furnish water for the city of Omaha, South Omaha and Florence and private consumers, and needed in its business just such pipe as was and is now manufactured by these defendants. As receiver of the said water company, I wrote for prices to quite a number of different and independent corporations whose business was to manufacture and sell cast-iron pipe, and as near as I can recollect, to the following:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.

R. D. Wood & Co., Philadelphia, Pa.

South Pittsburg pipe works, So. Pittsburg, Tenn.

McNeil Pipe & Foundry Co., Burlington, N. J.

Howard-Harrison Iron Co., Bessemer, Ala.

Lake Shore foundry, Cleveland, Ohio.

Colorado Iron & Fuel Co., Pueblo, Col.

Addyston Pipe & Steel Co., Cincinnati, Ohio.

Dennis Long & Co., Louisville, Ky.

The Ohio Pipe Co., Columbus, Ohio.

Chattanooga foundry & pipe works, Chattanooga, Tenn.

Anniston Pipe & Foundry Co., Anniston, Ala.

The most favorable bid that we received was the one made by the South Pittsburg pipe works, which was \$24.95 per net ton

- 174 f. o. b. Omaha, and we awarded to said company on June 25, 1895, the contract for furnishing the pipe. We have since and during the year 1896 bought several bills of pipe from the South Pittsburg pipe works at the price of \$24 per net ton f. o. b. Omaha. In fact, we have bought from said pipe works during the year 1895 and 1896 about six thousand nine hundred (\$6,900) tons of pipe, and we bought from said company because they sold to us cheaper than we could purchase the same quality of pipe elsewhere. We considered the prices at which we bought this pipe from the South Pittsburg pipe works to be fair and reasonable.

The affiant further states that his company has received several letters from one signing his name J. E. McClure, which are here made Exhibits A, B, C, and D, and are hereto attached and which explain themselves. Affiant in '92, '93, '94, '95, and '96 bought the amount of pipe and at prices shown on Ex. "E" of South Pittsburg pipe works.

(Signed)

E. L. BIERBOWER.

Subscribed and sworn to before me by E. L. Bierbower this 15th day of January, 1897.

[SEAL.]

(Signed)

STOCKTON HEATH,

*Notary Public in and for Douglas County, Nebraska.*

#### EXHIBIT "A" TO E. L. BIERBOWER'S AFFIDAVIT.

Mr. Elias Bierbower, receiver American Water Works Co., Omaha, Neb.

DEAR SIR: Having been private stenographer and confidential clerk for the Chattanooga foundry & pipe works mnfrs. of cast-iron pipe of this city, and stenographer in part for a combination or trust, I am in position to know whereof I speak, and consequently I write to ascertain your answers to following questions:

1st. Are you as receiver desirous of collecting a good sum of money fraudulently and illegally extorted from the American Water Works Co. by means of said collection whereby all competition has been kept down?

2nd. Will you compensate me to the extent of 25 per cent. of the amount so recovered, payment of which is to be contingent on your recovery, and shall be given in consideration of information I may furnish which will bring about such recovery?



175 3rd. Will you agree to turn your claim over to the responsible counsel I will name for collection; if not, will you demand payment of the claim yourself within ten days after receiving evidence, and if not paid within twenty days file your bill in the courts for collection and keep me fully advised as the matter progresses?

I can furnish evidence that will without doubt be the means of recovering to the American Water Works Co. a good sum of money. At least the most able attorneys in this city say so.

I have undoubted evidence and the law applicable is very plain.

Please answer me fully and at once whether or not you desire to recover money justly due said company.

Resp'y &c.,

(Signed)

J. E. MCCLURE.

EXHIBIT "B" TO E. L. BIERBOWER'S AFFIDAVIT.

Copy.

CHATTANOOGA, TENN., April 29th, 1896.

DEAR SIR: I have investigated the matter about which you have had some correspondence with parties in a western city, in which you undertake to place the city authorities in possession of information that will enable them to save a large sum of money for the city.

From an examination of the evidence you have, and of the law applicable to the facts, I can say with confidence that you have the means of doing what you propose. It may be important to state that no city official will be implicated in any way by the step you suggest. If desirable, I will make a more definite statement.

I am prepared to satisfy any lawyer of the correctness of my views.

Yours truly,

(Signed)

E. M. DODSON,

Attorney-at-law.

"Please return when noted."

EXHIBIT "C" TO E. L. BIERBOWER'S AFFIDAVIT.

CHATTANOOGA, TENN., Oct. 12th, 1896.

Mr. Ellis L. Bierbower, general manager, Omaha, Neb.

DEAR SIR: Yours of Aug. 29th. I would be pleased to know if you have as yet submitted my letter of Aug. 24th, to the officers of the company?

176 You stated you would probably do so about Sept. 20th, but as I have received no word from you is my reason for writing you now.

Other corporations and contractors have taken up the matter of collecting amounts which they have been defrauded out of owing to said "collections," and if various claims are not amicably settled, there will be bills filed to collect same in a few days your claim

would be approximately 10 to \$15,000.00 straight, and if collected through the courts would increase threefold. If your company desires to recover money in question and will allow 25 per cent. of amount recovered, said amount to cover all costs of collection, and to compensate me for evidence and aid which I may render, and payment of which to be contingent on such recovery, please make out itemized statement of all pipe and specials purchased from South Pittsburg pipe works of South Pittsburg, Tenn., during the year of 1895, giving weight, size, number of pieces, date of purchase, swear to same before a notary public and sent to me and I will insert the correct amount of overcharge and turn over to responsible counsel to collect.

In the event your company concludes to take action on this matter, please write the following letter and sent to me:

" OMAHA, NEB., Oct. —, 1896.

Mss. Richmond, Chambers & Head, att'ys, Chattanooga, Tenn.

GENTLEMEN: We enclose herewith an account against South Pittsburg pipe works of South Pittsburg, Tenn., for \$—, which was fraudulently and illegally charged.

We place same in your hands for collection on a contingent fee of 25 per cent. to cover all cost of collection, and said amount to be paid to J. E. McClure of your city, the remaining three-fourths to be remitted to us.

Kindly advise us of your acceptance to handle claim as above stated and oblige,

Yours, etc.,

(Signed)

— — —."

I enclose herewith copy of opinion of one of the most able attorneys of this city. This is applicable to your case also.

Please give me your ultimatum at once.

Resp'y, etc.,

(Signed)

J. E. McCLURE.

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EXHIBIT " D " TO E. L. BIERBOWER'S AFFIDAVIT.

CHATTANOOGA, TENN., Dec. 23rd, 1896.

Mr. E. L. Bierbower, general manager, Omaha, Neb.

DEAR SIR: I have not heard from you on the subject-matter of my several letters, except the one in which you stated the matter would be brought to the attention of officers at their next meeting. This has been several months ago, and I would appreciate hearing from you on the subject at once.

The "trust" business is in the hands of the U. S. dist. att'y, and the American Water Co. are entitled to recover a large sum, of course, of the Omaha Water Co. in the transfer, assumed all the liabilities and assets they would naturally be the claimant. If this was not the case, I would be pleased if you would advise me by return mail how it is. If you are not the proper official to give this information, kindly refer this letter to proper party to answer. In past corre-

spondence I stated I would take the claim on a contingency to cover all costs, etc. I now wish to state I could not do this, except as to myself. The attorneys' fee and court costs would have to be arranged direct between you and your attorneys. My contingent fee of 25 per cent. in the event of recovery is still good, and is the basis on which I wish to work this claim.

Other corporations and contractors are working through me, and it will be necessary for you people to do likewise to establish the correct amount of your claim. The matter comes up for trial January 25th, and there is no time to lose. Awaiting a prompt reply, I am,

Yours, etc.,

(Signed)

J. E. McCLURE,  
13 West 6th St.

1892.....	price	29 50	28 50	12,747 47
1893.....	"	27 00	25 50—25 00	20,686 41
1894.....	"	23 00	22 50	8,484 60
1895.....	"	24 95	23 50—24 50	121,104 42
1896.....	"	24 50	24 00	25,256 29—\$188,279 19

178      *Affidavit of A. C. Overholt. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF PENNSYLVANIA, }  
County of Westmoreland. }

Before the undersigned, a notary public, in and for the county and States aforesaid, personally appeared A. C. Overholt, who, being duly sworn, deposed as follows:

I am a citizen of Scottdale, Penn.; I am now, and have been for nine years the chairman of the National Foundry and Pipe Works, Ltd., of Scottdale, Pa., which is a limited stock company engaged in the manufacture of cast-iron water and gas pipe and special castings, and has been engaged in that business for eleven years.

I have read sections 3 and 10 of the petition in the suit of The United States against The Addyston Pipe & Steel Company, Cincinnati, Ohio; Dennis Long & Company, Louisville, Ky.; Howard-Harrison Iron Company, Bessemer, Ala.; Anniston, Pipe & Foundry Company, Anniston, Ala.; South Pittsburg Pipe Works, South Pittsburg, Tenn.; and Chattanooga Foundry & Pipe Works, Chattanooga, Tenn., which suit was brought in the circuit court of the United States for the southern division of the eastern district of Tennessee, and which petition was filed December 10th, 1896.

The allegations contained in said sections 3 and 10 are not true. The principal manufacturers of cast-iron water and gas pipe and

special castings that are now, and have been since December 28th, 1894, in operation in this country, are as follows:

- Shickle, Harrison & Howard, St. Louis, Mo.
  - Howard-Harrison Iron Company, Bessemer, Ala.
  - Anniston Pipe & Foundry Company, Anniston, Ala.
  - South Pittsburg pipe works, South Pittsburg, Tenn.
  - Chattanooga foundry & pipe works, Chattanooga, Tenn.
  - Dennis Long & Company, Louisville, Ky.
  - Addyston Pipe & Steel Company, Cincinnati, Ohio.
  - Colorado Coal, Iron & Fuel Company, Pueblo, Colo.
  - Oregon Iron & Steel Company, Oswego, Ore.
  - 179 Michigan Peninsular Car Mfg. Co., Detroit, Mich.
  - Ohio Pipe Company, Columbus, Ohio.
  - Lake Shore foundry, Cleveland, Ohio.
  - J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, Ohio, and is now located at New Comerstown, Ohio.
  - Glamorgan Pipe & Foundry Company, Lynchburg, Va.
  - National foundry & pipe works, Scottdale, Pa.
  - R. D. Wood & Co., Philadelphia, Pa.
  - The McNeil Pipe & Foundry Company, Burlington, N. J.
  - Warren Foundry & Machine Company, Phillipsburg, N. J.
  - Reading Iron Company, Reading, Pa.
  - Buffalo Cast Iron Pipe Company, Buffalo, N. Y.
  - Utica Pipe Foundry Company, Utica, N. Y.
- The National Foundry & Pipe Works, Ltd., now has a melting capacity of 350 tons and during the years 1895 and 1896 had a daily capacity of 100 tons of cast-iron water and gas pipe and special castings. It has now, and had during the years 1895 and 1896, an ample capital for the vigorous and successful conduct of its business. The National Foundry & Pipe Works, Ltd., was during the years 1895 and 1896 an active competitor of the six defendants in the suit above referred to for orders in the territory named in said section 3 of said petition above referred to, and secured during the years 1895 and 1896 its reasonable proportion of the orders in said territory.

A very large proportion of the orders which are placed for cast-iron pipe are placed after advertising for bids and receiving proposals which are opened in the presence of, and read to, the bidders; even when bids are not solicited by a regular advertisement, but by specific invitation by letter or otherwise to each bidder, the orders are in most cases given to the lowest bidder. I am therefore in position to know that a very large proportion of the orders secured during the years 1895 and 1896 by the six defendants in the suit above referred to, were taken at prices which were not only fair and reasonable and such as would not leave the manufacturer more than a very moderate margin of profit, but that on many of the orders the prices were so low as not to leave a reasonable margin of profit to the manufacturer.

(Signed)

A. C. OVERHOLT, *Chairman.*

Subscribed and sworn to before me by A. C. Overholt, this ninth day of January, 1897.

(Signed)

[SEAL.]

JOHN RUTHERFORD,  
Notary Public.

180      *Affidavit of W. E. Clow. Filed by Defendants.*

(Endorsed:) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF —, }  
County of —. }

Before the undersigned, a notary public in and for the county and State aforesaid, personally appeared W. E. Clow, who being duly sworn deposed as follows:

I am a citizen of Chicago, Ills. I am now and have been for 3 years the vice-president of the J. B. Clow & Sons, of Chicago, Ills., which is a corporation engaged in the manufacture of cast-iron water and gas pipe and special castings, and has been engaged in that business for six years; its plant for the manufacture of cast-iron pipe is at New Comerstown, Ohio.

I have read sections 3 and 10 of the petition in the suit of The United States against The Addyston Pipe & Steel Company, Cincinnati, O.; Dennis Long & Company, Louisville, Ky.; Howard-Harrison Iron Company, Bessemer, Ala.; Anniston Pipe & Foundry Company, Anniston, Ala.; South Pittsburg Pipe Works, South Pittsburg, Tenn., and Chattanooga Foundry & Pipe Works, Chattanooga, Tenn., which suit was brought in the circuit court of the United States for the southern division of the eastern district of Tennessee, which petition was filed December 10, 1896.

The allegations contained in said sections 3 and 10 are not true. The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28, 1894, in operation in this country are as follows:

Shickle, Harrison & Howard Iron Company, St. Louis, Mo.

Howard-Harrison Iron Company, Bessemer, Ala.

Anniston Pipe & Foundry Company, Anniston, Ala.

South Pittsburg pipe works, South Pittsburg, Tenn.

Chattanooga foundry & pipe works, Chattanooga, Tenn.

Dennis Long & Company, Louisville, Ky.

Addyston Pipe & Steel Company, Cincinnati, O.

Colorado Coal, Iron & Fuel Company, Pueblo, Colo.

181      Oregon Iron & Steel Company, Oswego, Ore.

Michigan Peninsular Car Mfg. Co., Detroit, Michigan.

Ohio Pipe Company, Columbus, O.

Lake Shore foundry, Cleveland, O.

J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, Ohio, and is now located at New Cornerstown, Ohio.

Glamorgan Pipe & Foundry Company, Lynchburg, Va.

National foundry & pipe works, Scottsdale, Pa.

R. D. Wood & Company, Philadelphia, Pa.

The McNeil Pipe & Foundry Company, Burlington, N. J.

Warren Foundry & Machine Company, Phillipsburg, N. J.

Reading Iron Company, Reading, Pa.

Buffalo Cast Iron Pipe Company, Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

The James B. Clow & Sons now has, and during the years 1895 and 1896 had, a daily capacity of 75 tons of cast-iron water and gas pipe and special castings. It has now, and had during the years 1895 and 1896, an ample capital for the vigorous and successful conduct of its business. The James B. Clow & Sons was, during the years 1895 and 1896, an active competitor of the six defendants in the suit above referred to for orders in the territory named in said section 3 of said petition above referred to, and secured during the years 1895 and 1896 its reasonable proportion of the orders in said territory.

A very large proportion of the orders which are placed for cast-iron pipe are placed after advertising for bids and receiving proposals which are opened in the presence of, and read to the bidders; even when bids are not solicited by a regular advertisement, but by specific invitation by letter or otherwise to each bidder, the orders are in most cases given to the lowest bidder. I am therefore in position to know that a very large proportion of the orders secured during the years 1895 and 1896 by the six defendants in the suit above referred to, were taken at prices which were not only fair and reasonable and such as would not leave the manufacturer more than a very moderate margin of profit, but that on many of the orders the prices were so low as not to leave a reasonable margin of profit to the manufacturer.

(Signed)

W. E. CLOW.

Subscribed and sworn to before me by W. E. Clow, this ninth day of January, 1897.

[SEAL.]

FRANK S. FISHER,

*Notary Public.*

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Office of board of public works & affairs.

NASHVILLE, TENN., *January 22, 1897.*

Messrs. South Pittsburg Pipe Works, South Pittsburg, Tenn.

GENTLEMEN: Referring to your request for expression from us in regard to prices our city had paid for cast-iron water pipe during the last two years, we beg to say that on July 23, 1896, we purchased from yourselves 160 tons of 6-inch pipe, and on October 6, 1896, we purchased from L. J. Lomasney & Co., jobbers of this city, 130 tons



of 12-inch pipe which was manufactured by the Ohio Pipe Co., of Columbus, Ohio.

Previous to purchasing this pipe, we advertised for sealed proposals, and we attach hereto a certified copy of that portion of our minutes covering the above purchase, showing the competition we enjoyed and the prices we received.

You will note that we purchased in each instance from the lowest bidder.

Yours very truly,

BOARD OF PUBLIC WORKS AND  
AFFAIRS.

(Signed)

GEO. W. STAINBACK, *Chm.*

*Affidavit of James Murphy. Filed by Defendant.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the  
Eastern District of Tennessee.

UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF ILLINOIS, {  
County of Cook, } ss :

Personally appeared before me, the undersigned, a notary public in and for the county and State aforesaid, James Murphy, who being duly sworn, deposes and says as follows :

I am a citizen of Illinois, and a contractor in the business of building and extending water works. During the years 1835 and 1896 I had occasion to make large purchases of cast-iron pipe. I have received prices from the Addyston Pipe & Steel Company, of Cincinnati, Ohio, in competition with the Glamorgan iron works of Lynchburg, Virginia; J. B. Clow & Sons and others, and all purchases made by me from the Addyston Pipe & Steel Company have been when their prices was the lowest in competition with other foundries.

Affiant further says that on account of his position as contractor, he is familiar with the prices of cast-iron pipe, and that the prices received from the Addyston Pipe & Steel Company were reasonable and satisfactory.

(Signed)

JAMES MURPHY.

Sworn and subscribed before me this 14th day of January, 1897.

(Signed)

JOHN T. BARKER,

[SEAL.]

*Notary Public.*

*Affidavit of M. F. Longhman. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF NEW YORK, }  
County of New York. }

Personally appeared before me S. S. Goodale, a notary public in and for said State and county, the undersigned M. F. Longhamn, who being duly sworn by me depose and saith as follows:

I am a citizen of the State of New York, county of New York, and reside in the city of New York, and am the purchasing agent for the Plant system of railways, &c.

When in need of cast-iron pipe I acquaint myself with the market prices at different points and negotiate the purchase to the best advantage. I generally found my orders could be placed with the Anniston Pipe & Foundry Company at the best price, all things considered, such as routing the pipe over our lines, &c.

184 The Jno. Simmons Company also make me close figures on cast-iron pipe and did so when I requested quotations from the Anniston Pipe & Foundry Company in January, 1895, and June, 1896. At those times they represented a company whose name I have been requested not to mention.

(Signed)

M. F. LONGHMAN.

Sworn to and subscribed to before me at New York, State of New York, on this the ninth day of January, 1897.

(Signed)

S. B. GOODALE,

[SEAL.]

Notary Public, N. Y. Co.

*Affidavit of G. M. Hanson. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

STATE OF ALABAMA, }  
County of Bullock. }

Personally appeared before me the undersigned notary public, for the State and county aforesaid, G. M. Hanson, who being duly sworn depose as follows:

That he is chairman of the water-works committee at Union Springs, Alabama, he states that he had since December 28, 1894, bought about one hundred and ninety-three (193) tons of cast-iron water pipe and that he received bids from R. D. Wood & Co., of Philadelphia, Penn., Anniston Pipe & Foundry Co.; Howard-

Harrison Iron Co., of Bessemer, Ala., and from Chattanooga foundry & pipe works.

That said pipe was to be delivered at Union Springs, Alabama, and was to be subject to the usual specifications, and that any pipe not conforming to said specifications was subject to rejection. In all cases pipe was to be delivered at Union Springs, Alabama, and any broken or rejected pipe was to be replaced by said Chattanooga foundry & pipe works. That the prices charged him by said Chattanooga foundry & pipe works was to the best of his knowledge and belief fair and reasonable and according to his information fair and reasonable and afforded no more than a reasonable profit in doing such work.

(Signed)

G. M. HANSON.

Sworn and subscribed to before me this 9th day of January, 1897.

(Signed)

J. D. NORMAN,

Notary Public.

[SEAL.]

185 *Affidavit of T. W. Snow. Filed by Defendants.*

(Endorsed:) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF ILLINOIS, }  
County of Kane. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared T. W. Snow, who, being duly sworn, deposed as follows:

I am the assistant general agent of the U. S. Wind Engine & Pump Co., of Batavia, Kane county, Illinois, and have had in charge all matters pertaining to water-works construction, during the years 1895 and 1896, and he also says that the aforesaid company is engaged in the manufacture of windmills, water towers, stand-pipes, having tools and many other articles which are sold all over the world.

That in the prosecution of this business he has been for many years familiar with the prices which contractors have had to pay for water pipe made of cast iron and that there have been since December 28, 1894, the following pipe works in operation:

Glamorgan Pipe & Foundry Co., Lynchburg, Va.

R. D. Wood & Co., Philadelphia, Pa.

Buffalo Cast Iron Pipe Co., Buffalo, N. Y.

Utica Pipe & Foundry Co., Utica, N. Y.

Shickle, Harrison-Howard Iron Co., St. Louis, Mo.

Howard-Harrison Co., Bessemer, Ala.  
 Anniston Pipe & Foundry Co., Anniston, Ala.  
 Dennis Long & Co., Louisville, Ky.  
 South Pittsburg pipe works, So. Pittsburg, Tenn.  
 Chattanooga foundry & pipe works, Chattanooga, Tenn.  
 Addyston Pipe & Steel Co., Cincinnati, Ohio.  
 Michigan Peninsular Car Mfg. Co., Detroit, Mich.  
 Ohio Pipe Co., Columbus, Ohio.  
 Lake Shore Foundry Co., Cleveland Ohio.  
 J. B. Clow & Sons, Chicago, Ill.  
 Jackson & Woodin Co., Berwick, Pa.

186 That affiant has in the two years mentioned been engaged in selling and constructing and extending water-works systems in various places as enumerated below :

Long Prairie, Minn.	Deerfield, Wis.
Brightwood, Ind.	Paullina, Ia.
Elysian, Minn.	Mt. Morris, Ill.
Valley City, N. D.	Sherburne, Minn.
Dayton, Ia.	Kentland, Ind.
Williams, Ia.	Warren, Ill.
Montezuma, Ia.	Lena, Ill.
Menomonee Falls, Wis.	Amenia, N. D.
Memphis, Mo.	Stockton, Ill.
Freeburg, Ill.	Blanchard, N. D.
Batavia, Ill.	

and that there have been laid over 2,000 tons of pipe at these places, with all of which he has been personally familiar in detail, both as to price and to quality; and that he, of his own knowledge, knows that each and every one of the aforesaid orders for cast-iron pipe have been placed with the lowest responsible bidders among the list of founders herein enumerated.

(Signed)

T. W. SNOW.

Subscribed and sworn to before me by T. W. Snow, this 13th day of January, 1897.

[SEAL.]

(Signed)

A. D. MALLORY,

Notary Public in and for Kane County, Illinois.

*Affidavit of James P. Shortall. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF ILLINOIS, }  
 County of Cook, } ss.:

Personally appeared before me, the undersigned, a notary public

in and for the county and State aforesaid, James P. Shortall, who, being duly sworn, deposes and says as follows:

I am a citizen of Illinois, and a contractor in the business of building and extending water works. During the years

1895 and 1896 I had occasion to make large purchases of cast-iron pipe. I have received prices from the Addyston Pipe & Steel Company of Cincinnati, Ohio, in competition with the National Pipe & Foundry Company of Scottdale, Pennsylvania; Ohio Pipe Company of Columbus, Ohio; Lake Shore foundry of Cleveland, Ohio; J. B. Clow & Sons, and others, and all purchases made by me from the Addyston Pipe & Steel Company have been when their price was the lowest in competition with other foundries.

Affiant further says that on account of his position as contractor, he is familiar with the prices of cast-iron pipe, and that the prices received from the Addyston Pipe & Steel Company were reasonable and satisfactory.

(Signed)

JAMES P. SHORTALL.

Sworn and subscribed to before me, this 13th day of January, 1897.

[SEAL.]

JOHN T. BARKER,  
Notary Public.

*Affidavit of Oliver Phelps. Filed by Defendants.*

(Endorsed:) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF MICHIGAN, }  
County of Wayne. }

Before the undersigned, a notary public, in and for the State and county aforesaid, personally appeared Oliver Phelps, who, being duly sworn, deposed as follows:

I am a citizen of Detroit, Michigan; am now, and have been for four years, a sales agent of the Michigan Peninsular Car Company of Detroit, Michigan, which is a corporation engaged in part in the manufacture of cast-iron water and gas pipe and special castings, and has been engaged in that business for four years.

I have read sections 3 and 10 of the petition in the suit of The United States against The Addyston Pipe & Steel Company, 188 Cincinnati, Ohio; Dennis Long & Company, Louisville, Ky.; Howard-Harrison Iron Company, Bessemer, Ala.; Anniston Pipe & Foundry Company, Anniston, Ala.; South Pittsburg Pipe Works, South Pittsburg, Tenn.; and Chattanooga Foundry & Pipe Works, Chattanooga, Tenn., which suit was brought in the circuit

court of the United States for the southern division of the eastern district of Tennessee, and which petition was filed December 10th, 1896.

The allegations contained in said sections 3 and 10 are not true.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28th, 1894, in operation in this country are as follows:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.

Howard-Harrison Iron Co., Bessemer, Ala.

Anniston Pipe & Foundry Co., Anniston, Ala.

South Pittsburg pipe works, S. Pittsburg, Tenn.

Chattanooga foundry and pipe works, Chattanooga, Tenn.

Dennis Long & Co., Louisville, Ky.

Addyston Pipe & Steel Co., Cincinnati, Ohio.

Colorado Coal, Iron & Fuel Co., Pueblo, Colo.

Oregon Iron & Steel Co., Oswego, Ore.

Michigan Peninsular Car Co., Detroit, Mich.

Ohio Pipe Company, Columbus, Ohio.

Lake Shore foundry, Cleveland, Ohio.

J. B. Clow & Sons, Chicago, Illinois, whose foundry was first located at New Philadelphia, Ohio, and is now located at New Comerstown, Ohio.

Glamorgan Pipe & Foundry Co., Lynchburg, Va.

National foundry & pipe works, Scottdale, Pa.

R. D. Wood & Co., Philadelphia, Pa.

The McNeil Pipe & Foundry Co., Burlington, N. J.

Warren Foundry & Machine Co., Phillipsburg, N. J.

Reading Iron Co., Reading, Pa.

Buffalo Cast Iron Pipe Co., Buffalo, N. Y.

Utica Pipe Foundry Co., Utica, N. Y.

The Michigan Peninsular Car Company now has, and during the years 1895 and 1896 had, a daily capacity of 75 tons of cast-iron water and gas pipe and special castings. It has now, and had during the years 1895 and 1896, an ample capital for the vigorous and successful conduct of its business. The Michigan Peninsular Car Co. was, during the years 1895 and 1896, an active competitor

of the six defendants in the suit above referred to for orders 189 in the Territory named in said section 3 of said petition above referred to, and secured during the years 1895 and 1896 its reasonable proportion of the orders in said Territory.

A very large proportion of the orders which are placed for cast-iron pipe are placed after advertising for bids and receiving proposals which are opened in the presence of, and read to the bidders; even when bids are not solicited by a regular advertisement, but by specific invitation by letter or otherwise to each bidder, the orders are in most cases given to the lowest bidder. I am, therefore, in position to know that a very large proportion of the orders secured during the years 1895 and 1896, by the six defendants in the suit above referred to, were taken at prices which were not only fair and reasonable and such as would not leave the manufacturer more than a very moderate margin of profit, but that on many of the



orders the prices were so low as not to leave a reasonable margin of profit to the manufacturer.

(Signed)

OLIVER PHELPS.

Subscribed and sworn to before me by Oliver Phelps this 22nd day of January, 1897.

[SEAL.]

\*(Signed)

RUFUS G. LATHROP,  
Notary Public, Wayne Co., Mich.

*Affidavit of W. S. Kuhn. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF PENNSYLVANIA, } ss:  
County of Allegheny, }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared W. S. Kuhn, who being duly sworn deposed as follows:

I am a citizen of Pittsburg, Allegheny county, Pennsylvania. I am now and have been for fifteen years the general manager of the American Water Works & Guarantee Company, of Pittsburg, Pa., which company owns and operates a number of water-works systems situated in different parts of the United States and including the Chattanooga water works.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28th, 1894, in operation in this country according to my knowledge are as follows:

Shickle, Harrison & Howard Iron Co, St. Louis, Mo.

Howard-Harrison Iron Company, Bessemer, Ala.

Addyston Pipe & Steel Company, Cincinnati, O.

Anniston Pipe and Foundry Company, Anniston, Ala.

Chattanooga foundry and pipe works, Chattanooga, Tenn.

Dennis Long & Company, Louisville, Ky.

South Pittsburg pipe works, South Pittsburg, Tenn.

Colorado Coal, Iron & Fuel Company, Pueblo, Col.

Oregon Iron & Steel Company, Oswego, Oregon.

Michigan Peninsular Car Mfg. Co., Detroit, Mich.

Ohio Pipe Company, Columbus, O.

Lake Shore foundry, Cleveland, O.

J. B. Clow & Sons, Chicago, Illinois, whose foundry was first located at New Philadelphia, O., and is now located at New Comers-town, O.

Glamorgan Pipe & Foundry Company, Lynchburg, Va.

National foundry & pipe works, Scottdale, Pa.

R. D. Wood & Company, Philadelphia, Pa.

The McNeil Pipe & Foundry Company, Burlington, N. J.

Warren Foundry & Machine Company, Phillipsburg, N. J.

Reading Iron Company, Reading Pa.

Buffalo Cast Iron Pipe Company, Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

Since December 28th, 1894, the American Water Works & Guarantee Company has purchased for use in its water-works systems 2,612 tons of cast-iron pipe and special castings from Dennis Long & Company, and several thousand tons from Shickle, Harrison & Howard Iron Co., Howard-Harrison Iron Co., South Pittsburg pipe works and the Anniston pipe works.

All of said purchases have been made at prices which I considered fair and reasonable, and which were satisfactory to the American Water Works & Guarantee Company.

In connection with the purchases of cast-iron pipe for the American Water Works & Guarantee Company I have considered 191 it my duty to keep posted in a general way as to the condition of the pig-iron market from time to time and the quotations which were being made for cast-iron pipe.

Some time in 1896, the American Water Works & Guarantee Company received a communication, dated Chattanooga, Tenn., April 21st, 1896, and signed "Z Z Z. Times," which communication read as follows:

Confidential.

CHATTANOOGA, TENN., *April 21st, 1896.*

To the president of the American Water Works Co., Pittsburg, Pa.

DEAR SIR: I am in a position to furnish you information that will enable your company to recover or save approximately \$15,000, unless I am very much mistaken. It will, however, take me some little time, say 30 or possibly 60 days, to get in proper shape and will cost me some money. I have to do a little detective work, not, however, affecting any of your officials, but an outside matter in which you are interested in a way that I can make plain to you, and if I fail to accomplish what I undertake I will ask for no compensation. But suppose I undertake and accomplish what I propose, will your proper authorities give me say 25 per cent. of what I may enable them to recover or save? In other words, would you enter into contract with me on above basis and act at my dictation in the matter, of course everything to be in a legal way?

I have reasons for wishing to remain unknown at the present time, but at the proper time will give my name and satisfy you that I am responsible. Please answer fully, everything to be confidential. I know whereof I speak, and if your answer is in the affirmative I will call on you in person inside of thirty days and prove to your satisfaction that I know my business.

You cannot lose and the whole matter will be of short duration. Please answer at once as per enclosed envelope.

Respectfully,  
(Signed)

Z. Z. Z. "TIMES."  
W. S. KUHN.

Subscribed and sworn to before me by W. S. Kuhn this eighteenth day of January, 1897.

[SEAL.]

(Signed)

G. A. HILLEMANN,

Notary Public.

192 *Affidavit of James Bowron. Filed by Defendant.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

THE UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL CO. ET AL. }

Affidavit of James Bowron.

STATE OF TENNESSEE, }  
Marion County. }

Personally appeared before me, A. A. Cook, notary public in and for said State and county, James Bowron, who solemnly affirms as follows:

He is treasurer of the Tenn. Coal, Iron & R. R. Co., and has been such since the year 1882, and he now resides at Birmingham, in the State of Alabama, that Tenn. Coal, Iron & R. R. Co., is engaged in the manufacture of pig iron in the States of Alabama and Tennessee and engaged in the sale of the said manufactured product throughout the United States, Europe and Asia, that the output of said Co.'s plants amounts to something like 600,000 tons per annum, and that he is personally familiar with the sales of such products and the prices obtained therefor and that the producers of cast-iron pipe are among the principal consumers of such iron and that the price of pig iron is the principal element to be considered in arriving at the cost of cast-iron pipe, such as is manufactured and sold by the defendants in this cause. He states that during the year 1895 owing to an increased demand for pig iron and a large reduction in the available stock thereof, the price increased at various dates to an aggregate amount of \$3.50 per ton over the price prevailing Jan'y 1, 1895, and that this advance so embarrassed the manufacturers of cast-iron pipe, caused by their inability to advance the price of their product with equal rapidity, that some of them failed to take delivery of pig iron at times contracted for.

He further states that in his behalf the pipe manufacturers have not made unusual profits during 1895 and '96, because to a larger extent than usual they have requested him as treasurer to accept pay for pig iron sold to them by notes instead of cash. He further states that owing to position of greater natural advantages, or accumulated capital to give more favorable terms of payment, the eastern manufacturers of pipe have run on the whole during 1895 and 1896 with more regularity than the southern

shops. He further states that the State of Ohio is the largest consuming point for foundry pig iron in the United States, and within said States there are three pipe shops, not members of the association, whose consumption of iron has been heavy and regular and who have been manufacturing the same into pipe, and there are other shops located within the States of Michigan and Missouri to which the Tenn. Coal, Iron & R. R. Co., have sold thousands of tons of iron and all these companies have been manufacturing pipe and selling it in competition with the defendants in what is designated in the original bill as "pay territory;" besides this the affiant is informed and believes the other pipe shops in the United States located on the inside of said territory and the other shops located on the outside of said territory have been selling their pipe in competition with the defendants. He further states that the Tenn. Coal & Iron R. R. Co., recently quoted two southern shops on 24,000 tons of iron intended to be used in manufacturing pipe for the city of Baltimore, but that the contract was secured by the National foundry & pipe works, of Scottdale, Pa., which owns its own blast furnace and can manufacture pipe without paying intermediate profits on the pig iron, but with this advantage only underbid the southern shops by twenty cents per ton.

Affiant further states that he keeps up with and is familiar with the sales of cast-iron pipe; that he is a stockholder and one of the directors of the defendant, The South Pittsburg Pipe Works; that he is familiar with the prices at which the several defendants sold their cast-iron pipe since December, 1894, and that he is also familiar with the prices of labor and the other elements which go to make up the cost of manufacturing cast-iron pipe, such as is manufactured and sold by each of the defendants to said bill, and that the price at which pipe has been sold by the South Pittsburg pipe works, and so far as informed he believes the prices at which the other defendants have sold their pipe has been fair and reasonable and in no sense exorbitant, practically all of said contracts of sale were let after advertising for bids or inviting competition on each sale from all the manufacturers of pipe in the United States, whose capacity for output was largely in excess of the demand; these advertisements or inquiries for pipe so came that manufacturers having a daily aggregate capacity of 2,500 tons or more could bid on each job. The result was a destructive competition to secure every contract offered. This competition did, or tended to  
 194 depress price below a remunerative rate; to cause the employment of many agents, and otherwise to produce useless struggles, expense and interference to secure work to keep their works in operation.

To lessen the expense in each of defendants' business, to promote the general good of each by information furnished as to freight rates, credit basis and otherwise, to maintain fair prices, and a just distribution of work, the South Pittsburg pipe works agreed to form an association with the other defendants.

This association was abandoned in May, 1895, for one better calculated as was thought, to accomplish the purposes desired. From

that date until September, 1896, they continued in this association. He states that in forming his association there was no reference to or thought of interstate commerce, and affiant did not then and does not now know the legal or judicial meaning of those terms; that there was no purpose or agreement to restrain the trade of either of defendants or others, but on the contrary it was the intent of said association to enlarge their trade by the employment of joint salesmen for the development of exports to foreign countries and to maintain fair prices, and secure for each a fair proportion of the work in a certain territory by restraining in a certain measure competition as among themselves only. This was accomplished by each defendant agreeing to pay into a common fund a certain per cent. out of the gross sum received on each contract obtained within the said territory. He states that the prices to customers for doing their work were not affected by said premiums, but were fixed by the general competition always invited on each job, and depended on the price at which the large number of outside competitors were willing to take the contract. This price depended on circumstances; the supply of pipe and contracts on hand; the specifications regulating the manufacture, loading and delivery of the pipe with the chances for extra expenses from the manner of inspection and the right to reject the work; the time of delivery, and the terms, manner and prospect of payment. All of these things were considered by all competitors, including defendants, in fixing the price to customers.

Affiant further states that it was the object of their agreement to deduct the premium from what was a fair and reasonable price, because otherwise it would not have operated to restrain competition so as to secure a proper division of work. If any one or more of the associates could have paid the premium or bonus on the pipe furnished and still have a fair price left, there would have been  
 195 no inducement to divide work, one of the associates might bid in all the work offered. Under said association each defendant retained absolute control of its own business as before the association was formed and owned absolutely all the pipe it manufactured.

It did not vest in any central committee or the association any right to control the defendants in the operation of their business. No such committee had the power to parcel the work to be done among the members of the association, but this was done by voluntary offers among themselves of amounts that each was willing to pay in the way of premiums out of the gross amount received on the contract offered. The amount that each was willing to pay depended largely on whether it had or not sufficient orders on hand.

This preference was determined before they became bidders on the contract offered by the customer, but notwithstanding the determination of such preference absolute freedom in decision remained with the customer, and cases have occurred where contracts have been awarded to this defendant by the customer over the shops which had the preference to secure the trade by virtue of the premium offered.

Affiant most positively denies that the said premium or bonus was added to whatever price defendants could force their customers to pay, or that it was a sum over and above a fair and reasonable price, or a price at which they could have sold the pipe if the association had not existed; and, in fact, the net profits received by this defendant from its sales of pipe *was* several thousand dollars less in the calendar year next following the formation of an association, than in the year preceding such association.

He states that the whole object of paying said bonus was to restrain competition as among defendants and allow to each a profitable division of work according to its relative capacity, and thereby maintain fair prices to all. The premium system was resorted to because there was no power in the association to control the business of defendants and thus secure a division of work.

In effect, said system has accomplished the purposes intended. Each defendant having done its reasonable share of the work the premiums paid by each have so equalized each other that the differences were but a small per cent. of this original premium paid.

Affiant further states that the customers of South Pittsburg pipe works have been and continue satisfied with the prices at 196 which they have been furnished pipe, notwithstanding the proposition sent to them, of which Exhibit "A," hereto attached, is a copy, and notwithstanding said propositions have been followed by further propositions, as he is informed.

(Signed)

JAMES BOWRON.

STATE OF TENNESSEE, }  
County of Marion. }

Personally appeared before the undersigned authority James Bowron, and solemnly affirmed (witness has conscientious scruples as—taking oath), that all the facts and statements made in the within and foregoing affidavit are true to the best of his knowledge, information and belief.

Sworn to and subscribed before me, this Jan'y 8th, 1896.

[SEAL.]

(Signed)

A. A. COOK,

Notary Public, Marion County.

*Affidavit of C. E. Burke. Filed by Defendants.*

(Endorsed:) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE AND STEEL COMPANY ET AL. }

STATE OF OHIO, }  
County of Cuyahoga, } ss:

Before the undersigned, a notary public, in and for the county and State aforesaid, personally appeared C. E. Burke, who, being duly sworn, deposed as follows:



I am a citizen of Cleveland, Ohio. I am now, and have been for ten years, the vice-president of the Lake Shore foundry of Cleveland, Ohio, which is a corporation engaged in the manufacture of cast-iron water and gas pipe and special castings, and has been engaged in that business for 23 years.

I have read sections 3 and 10 of the petition in the suit of The United States against The Addyston Pipe & Steel Company, Cincinnati, Ohio; Dennis Long & Company, Louisville, Ky.; Howard-Harrison Iron Company, Bessemer, Ala.; Anniston Pipe & Foundry Co., of Anniston, Ala.; South Pittsburg Pipe Works, South  
197 Pittsburg, Tenn., and Chattanooga Foundry & Pipe Works, Chattanooga, Tenn., which suit was brought in the circuit court of the United States for the southern division of the eastern district of Tennessee, and which petition was filed December 10th, 1896.

The allegations contained in said sections 3 and 10 are not true.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28th, 1894, in operation in this country, are as follows:

Shickle, Harrison & Howard Iron Company, St. Louis, Mo.

Howard-Harrison Iron Company, Bessemer, Ala.

Anniston Pipe & Foundry Company, Anniston, Ala.

South Pittsburg pipe works, South Pittsburg, Tenn.

Chattanooga foundry & pipe works, Chattanooga, Tenn.

Dennis Long & Company, Louisville, Ky.

Addyston Pipe & Steel Company, Cincinnati, Ohio.

Colorado Coal, Iron & Fuel Company, Pueblo, Colo.

Oregon Iron & Steel Company, Oswego, Ore.

Michigan Peninsular Car Mfg. Co., Detroit, Mich.

Ohio Pipe Company, Columbus, Ohio.

Lake Shore foundry, Cleveland, Ohio.

J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, Ohio, and is now located at New Comerstown, Ohio.

Glamorgan Pipe & Foundry Co., Lynchburg, Va.

National foundry & pipe works, Scottsdale, Pa.

R. D. Wood & Company, Philadelphia, Pa.

The McNeil Pipe & Foundry Co., Burlington, N. J.

Warren Foundry & Machine Co., Phillipsburg, N. J.

Reading Iron Company, Reading, Pa.

Buffalo Cast Iron Pipe Company, Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

The Lake Shore foundry now has, and during the years 1895 and 1896 had, a daily capacity of 200 tons of cast-iron water and gas pipe and special castings. It has now, and had during the years 1895 and 1896, an ample capital for vigorous and successful conduct of its business. The Lake Shore foundry was, during the years 1895 and 1896, an active competitor of the six defendants in the suit above referred to for orders in the territory named in said section 3 of said petition above referred to, and secured during the

years 1895 and 1896 its reasonable proportion of the orders in said territory.

198 A very large proportion of the orders which are placed for cast-iron pipe are placed after advertising for bids and receiving proposals which are opened in the presence of, and read to the bidders; even when bids are not solicited by regular advertisement, but by specific invitation by letter or otherwise, to each bidder, the orders are, in most cases, given to the lowest bidder. I am, therefore, in position to know that a very large proportion of the orders secured during the years 1895 and 1896 by the six defendants in the suit above referred to, were taken at prices which were not only fair and reasonable, and such as would not leave the manufacturer more than a very moderate margin of profit, but that on many of the orders the prices were so low as not to leave a reasonable margin of profit to the manufacturer.

(Signed)

C. E. BURKE.

Subscribed and sworn to before me by C. E. Burke, this 22nd day of January, 1897.

[SEAL.]

(Signed)

W. W. DUNCAN,

*Notary Public.*

*Affidavit of H. E. McWane. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE AND STEEL COMPANY ET AL. }

STATE OF VIRGINIA, }  
County of Campbell. }

Before the undersigned, a notary public in and for the county and State aforesaid, personally appeared H. E. McWane, who being duly sworn deposed as follows:

I am a citizen of Lynchburg, Va. I am now and have been for seven years the president of the Glamorgan Pipe & Foundry Company, of Lynchburg, Va., which is a corporation engaged in the manufacture of cast-iron water and gas pipe and special castings, and has been engaged in that business for nine years.

I have read sections 3 and 10 of the petition in the suit of The United States against The Addyston Pipe & Steel Co., Cincinnati, O.; Dennis Long & Co., Louisville, Ky.; Howard-Harrison Iron Co., Bessemer, Ala.; Anniston Pipe & Foundry Co., of Anniston, Ala.; South Pittsburg Pipe Works, South Pittsburg, Tenn., and Chattanooga Foundry & Pipe Works, Chattanooga, Tenn., which suit was brought in the circuit court of the United States for the southern division of the eastern district of Tennessee, and which petition was filed December 10th, 1896.

The allegations contained in said sections 3 and 10 are not true. The principal manufacturers of cast-iron water and gas pipe and special castings — are now, and have been since December 28th, 1894, in operation in this country are as follows:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.  
 Howard-Harrison Iron Company, Bessemer, Ala.  
 Anniston Pipe & Foundry Company, Anniston, Ala.  
 South Pittsburg pipe works, South Pittsburg, Tenn.  
 Chattanooga foundry & pipe works, Chattanooga, Tenn.  
 Dennis Long & Company, Louisville, Ky.  
 Addyston Pipe & Steel Company, Cincinnati, O.  
 Colorado Coal, Iron & Fuel Company, Pueblo, Col.  
 Oregon Iron & Steel Company, Oswego, Ore.  
 Michigan Peninsular Car Mfg. Co., Detroit, Mich.  
 Ohio Pipe Company, Columbus, O.  
 Lake Shore foundry, Cleveland, O.  
 J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at N. Philadelphia, O., and is now located at New Comerstown, O.  
 Glamorgan Pipe & Foundry Company, Lynchburg, Va.  
 National foundry & pipe works, Scottdale, Pa.  
 R. D. Wood & Company, Philadelphia, Pa.  
 The McNeil Pipe & Foundry Company, Burlington, N. J.  
 Warren Foundry & Machine Company, Phillipsburg, N. J.  
 Reading Iron Company, Reading, Pa.  
 Buffalo Cast Iron Pipe Company, Buffalo, N. Y.  
 Utica Pipe Foundry Company, Utica, N. Y.

The Glamorgan Pipe & Foundry Company now has and during the years 1895 and 1896 had, a daily capacity of seventy (70) tons of cast-iron water and gas pipe and special castings. It has now, and had during the years 1895 and 1896, an ample capital for the vigorous and successful conduct of its business. The Glamorgan Pipe & Foundry Company was during the years 1895 and 1896 an active competitor of the six defendants in the suit above referred to for orders in the territory named in said section 3 of said petition above referred to, and sold during the years 1895 and 1896 in said territory a considerable tonnage.

A very large proportion of the orders which are placed for cast-iron pipe are placed after advertising for bids and receiving proposals which are opened in the presence of, and read to the bidders; even when bids are not solicited by a regular advertisement, but by specific invitation by letter or otherwise to each bidder, the orders are in most cases given to the lowest bidder. I am therefore in position to know that a very large proportion of the orders secured during the years 1895 and 1896 by the six defendants in the suit above referred to, were taken at prices which were not only fair and reasonable and such as would not leave the manufacturer more than a very moderate margin of profit, but that on many of the orders the prices were so low as not to leave a reasonable margin of profit to the manufacturer.

(Signed)

H. E. McWANE.

Subscribed and sworn to before me by H. E. McWane this 15th day of January, 1897.

(Signed)

WM. M. MURRELL,  
Notary Public.

*Affidavit of Park Woodward. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States District Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL.

} No. —.

STATE OF GEORGIA, }  
Fulton County. }

Personally appeared before me J. H. Goldsmith, a notary public in and for said State and county, Park Woodward, to me personally known, who being duly sworn, deposed and say- as follows:

I am a resident citizen of the city of Atlanta, State of Georgia. Since the 9th day of January, 1896, I have been superintendent of the Atlanta water works, having the general superintendence 201 of the construction and maintenance, including purchase of pipe and other supplies. I am the chief executive officer of said water works and together with the secretary of the water board am the official custodian of the records of the board and the superintendent's office.

It has become necessary for me, in the line of my official duties, to inform myself with respect to the prices and quotations of prices at which water pipe is sold and offered for sale by private contract and through bids. In the United States there are about twenty-five manufacturers of cast-iron water pipe, located at different points, and actively engaged in the manufacture and sale of pipe. I am not an expert in the manufacture of cast-iron pipe, but I have a knowledge of the cost of production, the capital required and the business risk attendant upon its manufacture. Since I have been superintendent, as aforesaid, of the Atlanta water works, the city has purchased the bulk of its supply of cast-iron pipe and specials from the Anniston Pipe & Foundry Company of Anniston, Alabama. The attached statement marked "Exhibit A" is a true and correct statement of the amount, dates and prices paid by the city of Atlanta to said Anniston Pipe & Foundry Company for pipe and specials, as shown by the records of the city, all since the 9th day of Jan'y, 1896, having been purchased during my term of office as aforesaid. It has been used in the construction of extensions and in repairs to the system of water works for the year 1896, and has given entire satisfaction. The prices at which the said pipe was furnished were the lowest that could be obtained, and from my knowledge of the manufacture, capital required, and ordinary risks

incident to manufacture, I consider said prices fair, reasonable and moderate. I know in my official capacity of the charges made during the year 1896 against the Anniston Pipe & Foundry Co., for charging exorbitant prices, and of the city's investigation of the charges. The records in my office show, and I personally know it to be a fact, that pending an investigation of these charges the city withheld the payment of a balance of about \$2,700.00, and that after making a thorough investigation, the entire balance due the said company was, by resolution of the water board, ordered paid in full, and that since that time the city has continued to purchase what pipe it has required for water-works purposes from said Anniston Pipe & Foundry Company, at same prices. In contracting for the year's supply of pipe for 1896, bids were asked from several companies; and R. D. Wood & Co., extensive pipe manufacturers of New Jersey, made the lowest bid, their bid being

202 \$23.95 per ton f. o. b. Atlanta (6" and 8") and the Anniston Company's bid being \$21.00 per ton f. o. b. Atlanta.

These bids were for the year's supply for 1896. Wood & Co.'s bid was conditioned upon orders being made for shipment in 300-ton lots. This was impracticable for the city's needs, and the bids were deemed by the board too high and were all rejected. Subsequently, in April the board succeeded in making a contract for the year's supply with the Anniston Pipe & Foundry Co. for \$22.75 per ton f. o. b. Atlanta. The company, however, filled some orders for \$22.00 per ton upon the city's contention that such was the proper price under the conditions respecting those special shipments.

The Anniston Pipe & Foundry Company's dealings with the city in furnishing water pipe have been, in my judgment, uniformly fair.

(Signed)

PARK WOODWARD.

Subscribed and sworn to before me, this — day of January, 1897.

[SEAL.]

(Signed)

J. H. GOLDSMITH,  
Not. Pub., Fulton Co., Ga.

*Affidavit of H. C. Erwin. Filed by Defendants.*

(Endorsed:) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL.

STATE OF GEORGIA, {  
Fulton County. }

Personally appeared before me, S. P. Dean, a notary public, in and for said county and State, the undersigned, H. C. Erwin, who is personally known to me, and who, being duly sworn, doth depose and say as follows:

I have been a member of the board of water commissioners of the city of Atlanta, State of Georgia, since the 1st day of January, 1886, and during said period, and am now, a citizen of Fulton county, State of Georgia, residing in the city of Atlanta.

203 The water board, of which I am a member, has purchased a considerable quantity of cast-iron water pipe and fitting since I have been a member of said board, and I am and have been since said date familiar with the prices and quotations made upon such articles.

In looking after the business of the city of Atlanta as a member of said board I have become acquainted with the location, capacity and facilities of the different pipe manufacturers in a general way, for filling orders for the city of Atlanta.

The supply of pipe for the city of Atlanta for the year 1896 was furnished under contract by the Anniston Pipe & Foundry Company of Anniston, Alabama. The records of the board show that about 140 tons, hundred tons 6-in. pipe were furnished by said company and accepted and paid for by the city during the calendar year of 1896. The contract price for that year being \$22.75 per ton for pipe and 2½ cts. per pound for specials delivered at Atlanta, and about 200 tons of 6-in. pipe was bought from Atlanta Exposition Co. at \$24.50 per ton. While this contract to furnish a year's supply of pipe was being fulfilled by the Anniston Company, and at a time that the city owed it a considerable sum, for pipe it had furnished and was then furnishing upon the city's orders, it was brought to the attention of the water board that one James McClure, of the city of Chattanooga, Tenn., offered to furnish the proper authorities of the city of Atlanta with information to the effect that there was an illegal trust or combination among certain pipe manufacturers in the United States, whereby and through the means of which the price of pipe had been raised, and unreasonable and exorbitant prices had been charged, and that the pipe purchased by the city of Atlanta for its water-works supplies for the year 1896 has been purchased at a higher price than reasonable or fair from the Anniston Company by reason of its being in such association, combination or trust at the time the contract was made.

The water board met and discussed this matter, and on May 18th, 1896, referred these charges to a special committee to make an investigation and report the result to the water board. A special committee, consisting of myself as chairman and A. Hass and M. B. Torbett as associate members, made a thorough and extended investigation into the charges preferred. The committee went to Chattanooga and interviewed Mr. McClure, who called his attorney into the conference, and a proposition was made by them to the special committee offering to furnish the city evidences to substantiate said charges upon condition that an agreement be made whereby McClure should receive 25 per cent. of whatever sum might be recovered.

204 The committee reported this back to the board and afterwards McClure came to Atlanta and an agreement was arrived at whereupon he furnished the board with certain informa-



tion which he claimed would substantiate the charges made by him. That information consisted of what he claimed to be copies of the correspondence which passed through his hands while he was acting as confidential clerk of one of the members of the alleged combination. The water board caused the Anniston Pipe & Foundry Company to be notified generally of the charges preferred and directed that the amount then due the company be withheld until further investigation could be made.

The officers of the Anniston Pipe Company promptly appeared before the special committee and denied that they were in any illegal trust or combination to unfairly and unreasonably raise the price of pipe, and stated that the pipe they had furnished the city of Atlanta had been furnished at prices that were in all respects fair, reasonable and based upon honest competition. The special committee made further investigation and after thorough examination into the charges came to the conclusion that there was no proof to be had to the effect that the city had been charged an exorbitant, unfair or unreasonable price for said supply of pipe by said company and did on the 5th day of Sept., 1896, make a report in writing to the board of water commissioners to that effect, recommending the payment in full to said Anniston Co. of the balance then due on account of pipe, the sum then being \$2,765.80. The attached pages marked "Exhibit A," from one to seven, inclusive, is a full, true and correct copy of the report unanimously agreed upon, signed and submitted by said committee of investigation, and on the 19th day of September, 1896, the amount due to said Anniston Pipe & Foundry Company, as aforesaid, was, by resolution of the board of water commissioners, ordered paid, which was accordingly done.

From the investigation made by me personally while acting as chairman of said committee, and from my own knowledge respecting the cost of manufacture and incidents thereto, I consider and believe the prices paid by the city of Atlanta for cast-iron water pipe and fittings since I have been a member of said board as aforesaid, from to wit: the 1st day of January, 1886, to the present in all cases as honest, fair, reasonable and just.

H. C. ERWIN.

(Signed)

Sworn to and subscribed before me this 8th day of January, 1897.

[SEAL.]

(Signed)

S. P. DEAN,  
N. P., *Fulton County, Ga.*

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EXHIBIT "A" TO AFFIDAVIT OF H. C. ERWIN.

ATLANTA, GA., *Sept. 1, 1896.*

To the honorable board of water commissioners:

Your committee appointed to investigate the charges preferred by W. E. McClure against the Anniston pipe works in charging the city of Atlanta an extortionate price for pipe purchased during the years 1895 and 1896, beg leave to submit the following report:

Some time ago we visited the city of Chattanooga, Tenn., and there met Mr. McClure. Before making any statement to your committee he said that he desired first to consult his attorney, making an engagement to meet us some hours later at the hotel, where the conference was held.

He first asked us what amount the city of Atlanta would pay him for the information he possessed, further stating that he did not propose to make any disclosures without being well paid; that he had obtained his information while working as stenographer for the Chattanooga pipe works, making it a point to keep a copy of all correspondence between this company, the Anniston pipe works, the Pittsburg pipe works and three or four other pipe works, whose names he mentioned, as constituting a regular combination for the sale of pipe, and for some time previously he had been making a copy of all the correspondence between these different parties, without their knowledge or consent, as he intended using it for his own personal advantage.

Your committee informed him that they had no authority to make any trade with him whatever; that if he desired to make any disclosures he could do so, and as to the matter of compensation it would be submitted to the board of water commissioners.

On our return to the city we made a verbal report to the water board, and it was deemed advisable to have him come to Atlanta and appear before your committee, the other members of the board and the city attorney, and requesting him to bring all of his correspondence, stenographic notes, etc., with him. Representatives of the Anniston and Chattanooga pipe works, with their attorney, also appeared, but were not allowed to examine or see McClure. Mr. McClure was then told that if suit was brought and recovery was obtained against the Anniston pipe works, that the board would recommend the city to pay him 25 per cent. of the recovery, and if no action was taken he was to receive nothing. He there-  
206 upon offered his copies of letters, etc., and the same was referred to the city and assistant city attorneys for their opinion.

Your committee wishes to say that the charges made by McClure was what his attorney claimed to be a violation of sections 1 and 2 of what is known as the Sherman anti-trust law, passed by an act of Congress on July 2, 1890, said sections being fully set forth in the opinion of the city attorney, which we herewith submit.

Your committee desire to say that with others, members of the board they read and heard read the copies of the letters and copies of the minutes of this combine, in which it was claimed by McClure, the Anniston pipe works was a member. The substance of which was that these six pipe works had formed a combination not to sell pipe at less than a certain sum, to parcel out certain territories to different members of the combine, requiring bonuses to be paid and pooling the profits, and that Atlanta had to pay one year \$2.00 per ton more than the market price of pipe, and \$7.00 the other year more than the market price of pipe.

When the representatives of the Anniston pipe works were in-

formed that they had together with the Chattanooga pipe works charged Atlanta with this extortionate price for pipe, they immediately denied it, and stated that it was not only false but whenever it was necessary to be shown would prove that Atlanta had not been charged a higher price for pipe, together with the freight on the same, than any other city.

They further said that they had entered into no combination or organization which was in violation of law, and that they had not violated the Sherman anti-trust law, and were prepared to prove it whenever the occasion demanded it.

Your committee desire to say that they have carefully considered the evidence submitted by McClure, consisting of what he claims to be copies of letters written by various members of the combine, also copies of minutes of meetings, which he claims were taken down by him in shorthand, together with his statement as to what the cost or price should have been; and also the legal opinion rendered by the attorney and assistant attorney of the city of Atlanta and therefore beg leave to say:

First. That McClure presented to us letters of recommendation from some of the most prominent gentlemen of Chattanooga, Tenn., most of whom were city and State officials, and that since this investigation began these gentlemen have requested the withdrawal of their letters, stating that he had obtained the same from  
207 them for the purpose of securing a situation, but as it has come to their knowledge that the same are being used for the purposes of blackmail that they repudiate him and his course.

Second. The evidence he presents consists of copies of letters which he claims were written by different members of the combination, also copies of the minutes of the meetings of this combination in which as we have already stated were taken down by him as stenographer, and which he kept without their knowledge or consent. We therefore think that whatever weight would be given this evidence would depend upon the source from which it emanates.

Admitting, however, for the sake of argument, that all that McClure says is true, what would be the character of the case that the city of Atlanta would have against the Anniston pipe works for damages. The substance of this evidence is, that the Anniston pipe works, together with pipe works in Chattanooga, Bessemer, Ala., Pittsburg, Tenn., and two or three other pipe works, formed a combination to sell pipe in certain States and cities, allotting to each company certain territory, and requiring certain bonuses to be paid, and all profits to be pooled in the interest of the combine. The evidence as submitted by McClure does not show that all of the pipe manufacturers in the United States entered into this combine, but it only consisted of some six or seven of the same. The question therefore to be considered is, was this a violation of the Sherman anti-trust law, passed by Congress in 1890?

The written opinion of the city attorney calls attention to the fact that the only case involving this question was *The U. S. vs. E. C. Knight Co.*, 156 U. S., page 1, in which that court held: "Contracts, combinations, or conspiracies to control domestic enterprise in man-

ufacture, agriculture, mining, production in all its forms, or to raise or lower prices or wages might unquestionably tend to restrain external as well as domestic trade, but the restraint would be an indirect result, however, inevitable and whatever its extent, and such result would not necessarily determine the object of the contract, combination or conspiracy." He also states, quoting from the decision rendered by Chief Justice Fuller, the following language: "Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that its results should be a complete monopoly; it is sufficient if it really tends to that end, and to deprive the public of the advantages which flow from free competition." But in reading this decision we find that the court in

208 the same paragraph states the following: "Slight reflection will show that if the national power extends to all contracts and combinations in manufacture, agriculture, mining, and other productive industries whose ultimate result may effect external commerce, comparatively little of business operations and affairs would be left for State control." Immediately following this paragraph we find that the court further states: "It was in the light of well-settled principles that the act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the States or the citizens of the States in the acquisition, control or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted."

We observe in the written opinion of the city attorneys that they quote very extensively from the dissenting opinion rendered by Justice Harlan in this case, but fail to understand why they have done so, as the majority of the court rendered a different decision, which it is supposed decides the questions involved.

In this connection it is proper to state that the case of *U. S. vs. E. C. Knight Co.*, is known as the sugar trust case, in which it appears that the American Sugar Refining Company, in conjunction with various and divers other refining companies, purchased the stock of ninety-eight per cent. of all the sugar refineries in the country, and thereby securing control of ninety-eight per cent. of the entire output of refined sugar in this country. The charge was made that this was a monopoly, and was in direct violation of the act of 1890, but the Supreme Court of the United States, in the lengthy and exhaustive decision, held that it was not a violation of said act, Justice Harlan dissenting.

In reading the opinion furnished by the city attorneys we find that they present a number of decisions rendered by the courts of various States, going to show that charters obtained and combinations formed in these various States for the purpose of monopolizing or controlling the special trade for which they were formed, was contrary to the public policy of those States, preventing to a greater or

less extent free competition, and in some of the cases cited the charters were forfeited.

We hardly, however, see the applicability of those cases to the one now under consideration, to wit, the Anniston pipe works, or if there exists a combination to the combination, as neither the combination was chartered under the laws of Georgia, nor was the Anniston pipe works chartered under the laws of Georgia.

We find that in the investigation of this question there are a number of decisions rendered in the different district and circuit courts and which are published in various volumes of the Federal Reporter, similar in character to the one we are now investigating, in which the court held that it was not a violation of the act of 1890, stating that: "A monopoly in the prohibitive sense involved the element of an exclusive privilege or grant," which restrained others from the exercise of a right or liberty which they had before the monopoly was secured.

In view of the fact that this alleged combination consisted of only six or seven companies — it did not have the exclusive control of all pipe manufactured and sold in this country, and the further fact that pipe could have been purchased from other pipe works, your committee fail to see how a recovery could be had under the act of 1890.

The opinion rendered by the city attorneys is that the sale was a violation of said act, but further say, that irrespective of the act of July 2, 1890, the pipe company is liable to the city of Atlanta for damages, having practiced deception and fraud and that under sections 2957, 3173-'6, of our code the city can recover from the pipe works whatever amount it can prove it has been damaged by this deception and fraud. There might or might not be under the Georgia laws a cause of action against this company. It might or might not be such a misrepresentation as would render this company liable, as there are conflicting decisions on the subject. We notice one, however, in the 20th Georgia, page 242, which says: "That courts of equity will not afford relief to a party, who with all the means of protecting himself against the imposition of the other party, abandons them and relies on his statements of quality or value." It would therefore be proper for us to consider whether or not by obtaining prices from other pipe works not embraced in this combine pipe could have been purchased at a less price than what we gave.

Therefore, with all due respect to the able attorneys representing the city, is there not a doubt in their minds as to what would be a proper procedure in this case. Taking into consideration the conflicting decisions between the United States courts and the State courts with but one case touching on this question that has been decided by the Supreme Court of the United States, would it be good policy for the city of Atlanta to institute suit against this company in the United States court as a violation of the act of 1890, or the State court as in violation of the sections already

quoted, upon the evidence furnished by McClure and the character of the witness upon whom the city would have to rely.

While your committee accord to the city's distinguished attorneys a conscientious belief that the city could recover, yet in view of the conflicting decisions the possible weakness of the evidence and the character of the witness, it would be neither expedient or good policy for the city to test this question by a suit for damages, and therefore recommend that no action be taken and that the Anniston pipe works be paid whatever is due them for the pipe bought before and after the investigation of this charge began.

Respectfully submitted.

(Signed)

H. C. ERWIN, *Chairman*,  
A. HASS,  
M. D. TORBETT,  
*Committee.*

*Affidavit of C. C. Ferguson. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division  
of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

Affidavit of C. C. Ferguson, secretary of the Booneville (Ind.) Water  
Works Company.

THE STATE OF INDIANA, {  
Warrick County. }

Before me, Frank H. Hatfield, a notary public in and for said State and county, personally appeared C. C. Ferguson, who being duly sworn doth depose and say :

I was secretary of the Booneville water works, and was such secretary in May, 1896. The two attached pages addressed 211 "Supt. Booneville Water Co." are signed "J. E. McClure" were received through the United States mail soon after the day the same bears date by the Booneville Water Works Company. The company did not care to take any stock in an enterprise of the character proposed.

The Booneville Water Works Company had prior to the receipt of this letter purchased cast-iron water pipes in considerable quantities from the Anniston Pipe & Foundry Company, of Anniston, Alabama, and was then and is now satisfied with the purchases made with respect to prices and in other particulars. I personally consider the prices paid by the water works company as fair and reasonable and satisfactory.

(Signed)

C. C. FERGUSON.



Sworn to and subscribed before me, this 18th day of January,  
1897.

(Signed)  
[SEAL.]

FRANK H. HATFIELD,  
*Notary Public.*

CHATTANOOGA, TENN., May 16, '96.

Sept. Booneville Water Co., Boonville, Ind.

DEAR SIR: On Feb'y 10, '96, your company purchased from Anniston Pipe & Foundry Co., of Anniston, Ala., approximately 399 tons of 4, 6, 8, 10, 12, and 16 inch cast-iron pipe together with necessary specials—about 146 specials, this pipe was shipped you, commencing in March.

Having been private stenographer and confidential clerk until recently for the Chattanooga foundry & pipe w'ks, as well as the combination of pipe w'ks of which Anniston is a member, I am in position to furnish evidence that will recover to your company approximately eight thousand dollars which was illegally and fraudulently extorted from your Co., by means of a collusion "among certain pipe w'ks" whereby competition was kept down.

Of course naturally I do not care to assume the attitude which I would naturally be compelled to do unless I rec'd a just compensation for my services in the matters and I think 25 per cent. of the amount recovered by your company would be a fair and just basis.

Consequently if your proper authorities sees fit to entertain a proposition of this kind I would be pleased to hear from you on the subject at your earliest convenience.

Everything to be confidential for the time being. I have had as good counsel as this city affords and after a thorough perusal of the evidence which I have says in his written opinion that without doubt I have the means of doing what I propose. And further says he can convince any lawyer as to the correctness of his views.

I am perfectly familiar with every detail of this transaction and have related the facts in the case as they exist. Therefore if your proper authorities care to take legal steps in order to recover said amount and will enter into contract with me payment of same to be contingent on your recovery, and will write me a letter to this effect, I will come there and produce satisfactory evidence as will substantiate my charges. However, I do not care to go to this expense unless I have your positive assurance of your co-operation in the matter and on the basis which —.

Can furnish satisfactory references at the proper time.

Awaiting reply,  
I am respectfully,  
(Signed)

J. E. MCCLURE,  
P. O. Box 55.

*Affidavit of Joseph W. Blabon. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF MINNESOTA, }  
County of Ramsey. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared Joseph W. Blabon, who being duly sworn deposed as follows:

I am a citizen of St. Paul, Minnesota. I am now and have been for five years the purchasing agent of the Great Northern railway.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28, 1894, in operation in this country according to my knowledge are as follows:

- Shickle, Harrison & Howard Iron Co., St. Louis, Mo.
- Howard-Harrison Iron Company, Bessemer, Ala.
- Anniston Pipe & Foundry Company, Anniston, Ala.
- South Pittsburg pipe works, South Pittsburg, Tenn.
- 213 Chattanooga foundry & pipe works, Chattanooga, Tenn.
- Dennis Long & Company, Louisville, Ky.
- Addyston Pipe & Steel Company, Cincinnati, O.
- Colorado Coal, Iron & Fuel Company, Pueblo, Colo.
- Oregon Iron & Steel Company, Oswego, Ore.
- Michigan Peninsular Car Mfg. Co., Detroit, Mich.
- Ohio Pipe Company, Columbus, O.
- Lake Shore foundry, Cleveland, O.
- J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, Ohio, and is now located at New Comerstown, O.
- Glamorgan Pipe & Foundry Company, Lynchburg, Va.
- National foundry & pipe works, Scottdale, Pa.
- R. D. Wood & Company, Philadelphia, Pa.
- The McNeil Pipe & Foundry Company, Burlington, N. J.
- Reading Iron Company, Reading, Pa.
- Warren Foundry & Machine Company, Phillipsburg, N. J.
- Buffalo Cast Iron Pipe Company, Buffalo, N. Y.
- Utica Pipe Foundry Company, Utica, N. Y.
- West Superior Iron & Steel Co., West Superior, Wis.

Since December 28, 1894, the Great Northern railway has purchased  $2,959\frac{700}{1000}$  tons of cast-iron water pipe and special castings all of which has been purchased at prices which I consider fair and reasonable, and which were satisfactory to Great Northern railway.

The purchases of cast-iron pipe were made from the Ohio Pipe

Co., Michigan Peninsular Car Co., Dennis Long & Co., Buffalo Cast Iron Pipe Co., West Superior Iron & Steel Co., and the National Foundry & Pipe Co.

In connection with the purchases of cast-iron pipe for Great Northern railway, I have considered it my duty to keep posted in a general way of the condition of the pig-iron market from time to time, I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of cast-iron pipe foundry of average size, and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

JOS. W. BLABON.

Subscribed and sworn to before me by Jos. W. Blabon, this twenty-second day of January, 1897.

[SEAL.]

(Signed)

MAGNUS LUNDBERG,

*Notary Public, Ramsey County, Minnesota.*

214 *Affidavit of C. W. Harrison. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

In this case, C. W. Harrison makes oath as follows :

I am a citizen of South Pittsburg, Tennessee, and am vice-president and general manager of The South Pittsburg Pipe Works, one of the defendants in this case. Have been in the business of manufacturing cast-iron pipe for seven years. This pipe is made for special purposes and chiefly used by gas, water and municipal corporations, and is generally sold to other corporations under contracts requiring it to be tested and delivered according to specifications. Cast-iron pipe is not a commodity in general use, and as affiant believes, has no regular market value and is not an article of commerce that may be monopolized, because its production is practically unlimited.

The defendants to this bill are not the only persons engaged in the manufacture and sale of cast-iron pipe in the United States; on the contrary, the persons and corporations, other than defendants, as set out in the answer, whose places of business and plants are located at the points therein set forth. Many of them are located in the territory called in the bill pay territory, whose capacity for daily output in the aggregate is larger than the combined daily output of all these defendants, and those plants which are on the outside of said pay territory, in the aggregate, have a capacity for output nearly double that of all these defendants combined, and all said corporations may, and many of them do, compete for and bid off contracts in the territory mentioned in said bill as pay territory; and many of these corporations, on account of their

proximity to the seacoast, have more favorable shipping rates than do these defendants.

Affiant further states that most of the contracts secured by the defendants were to furnish pipe to gas companies and water companies and municipal corporations. That defendants and nearly all other persons engaged in the same business were appealed to for bids to furnish said pipe to said companies on the cars at 215 the city where the pipe was to be laid, and the contracts were generally awarded to the lowest bidder.

This was a mode of competition invited by the customer. In arriving at the price for which this pipe, in any special case could be furnished, the bidders were to consider not only the cost of manufacture and freight rates, but had to also consider the specifications, time, terms and prospect of payment and the tests to which the pipe should be subjected, and consequently there cannot, in the very nature of the business, be any regular market price for the sale of the pipe, but in each and every instance where the defendant, The South Pittsburg Pipe Works, have sold its pipe, the prices have been fair and reasonable and satisfactory to the purchaser. The fact is that in nearly all, if not all, the sales made by this defendant, the purchaser had a buyer, who was an experienced dealer in this particular commodity, knew the cost of all the elements that went into its manufacture, the probable freight rates and how much the prices would have to be enhanced by reason of the specifications or peculiar test to which the pipe was to be subjected; and if the price was not suitable to him, of course could reject it. In fact, in letting these contracts, the rule was that all bids might be rejected, and as a matter of fact, when these contracts were to be let out to the lowest bidders, nearly all the pipe shops in the whole country were notified of the letting so that they might have their representative there to bid on the job.

Affiant is generally acquainted with the prices received by the other defendants for the pipe, and he believes these prices reasonable and fair and just, and generally satisfactory to the purchaser.

The stockholders of the South Pittsburg pipe works have invested in their plant a great deal of money and this company has in its daily employ hundreds of workmen, laborers and clerks and all these people and their families are dependent on their labor for their daily bread and consequently it became very important to them all that the factory was run as steadily and constantly as possible; to do this it was necessary to avoid ruinous competition, secure the best of freight rates, lessen expenses, secure a regular supply of orders and extend the business of the company; for this purpose and to secure these objects, this defendant joined in the association with the other defendants, some time in 1894, to enable it to secure a fair share of the work according to its relative capacity and to 216 continue in operation, but not to monopolize or restrain either State or interstate commerce. Prior to this association the competition between these defendants and others provoked ruinous competition to the bidders.

On account of the manner in which these contracts are let the

customer prevented the establishment of any market price, and often placed a maximum limit on the price of the pipe, which maximum limit was often as low as the pipe could be furnished. In all such cases competition for the contract among the manufacturers was ruinous, and in many other cases competition to secure contracts was so fierce as to become ruinous, and on the theory that destructive competition results in monopoly, the defendants associated themselves together for their mutual benefit and protection.

And as a means of securing this end they agreed that each defendant should be charged with a certain per cent. of the gross sum received on each contract obtained within said territory named in the bill as pay territory, and clearance balances were remitted at stated periods on settlements then made.

This association was abandoned in May, 1895, for one better calculated to accomplish these several purposes, but in forming this association there was no reference had to interstate commerce. There was no purpose of agreement made to restrain the trade of any one of the defendants or others.

It was the purpose of this association to maintain fair prices, to secure for each of its members a fair proportion of the work in a certain territory by restraining in a reasonable measure competition as among themselves only. It was stipulated by defendants that all contracts secured within a certain territory by each of them that each should be charged with a bonus or premium of so much per ton, that this bonus or premium was not determined by how much the alleged combination could force the customer to pay or that it in any sense represented the amount charged for pipe over and above a reasonable price and above what the defendants would have been willing to sell the pipe for, had there been no understanding.

The price of pipe as between the customers and whichever of the defendants secured the contract was fixed by that special mode of competition invited by the customer and the bonus or premium was deducted from the price of the pipe, which price had been fixed and agreed on and was fair and reasonable. The bonus or premium in

no way effected the price of the pipe and its only effect was  
217 to restrain any one or more of the defendants from monopolizing more than a proper share of the trade within said territory; which object the bonus could not have accomplished if it had been an amount charged over and above a fair price, but being deducted from a fair price it did operate so that no one of the defendants could do more than its proper share of the work without loss.

Neither the South Pittsburg pipe works and none of the other defendants, as affiant believes, have ever collected any bonus from any of their customers.

One of the objects of the bonus was to secure to each of the defendants a fair proportion of the orders in this way:

The shops that had pipe on hand or material to manufacture the pipe and no orders did not want to shut down, and could afford to be charged with a larger bonus than the shop with plenty of orders ahead, and the shop with no orders as a matter of course would

generally secure the contract and by this means a fair distribution of orders was maintained and the shops as a general thing kept in constant operation.

Under this association each of the defendants retained absolute control of its own business and owned and controlled its own plant and absolutely all the pipe it manufactured; and as a matter of fact the association as an association had no interest in any one of the plants, no interest in any of the pipe manufactured by any one of the plants, and as a matter of fact not one of the defendants have ever at any time, shipped any pipe that belonged to the association or to any combine, trust of monopoly or that was the subject of any trust, combination or monopoly.

Neither did the defendants vest in the association or any central committee the power to parcel the work to be done among the members of the association, but this was done by voluntary offers on the part of each of the defendants as above explained; but notwithstanding the determination of such preference, absolute freedom of decision remained with the customer, and cases have occurred where contracts have been awarded to this defendant by the customer over the shop which had the preference to secure the trade by virtue of the premium offered.

The premium system was resorted to because there was no power in the association to control the business of the defendants and secure a fair division of the business to each according to its relative capacity.

The customers of the South Pittsburg pipe works have been and continue satisfied with the prices at which they had been  
218 furnished pipe, notwithstanding the propositions sent to them in substance as contained in the exhibits to Mr. Bierbower's affidavit.

(Signed)

C. W. HARRISON.

Subscribed and sworn to before me this 25 day of Jan., 1897.

(Signed)

HENRY O. EWING, *Clerk.*

*Affidavit of John Canefield. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF MINNESOTA, {

County of Ramsey. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared John Canefield, who being duly sworn deposed as follows:



I am a citizen of St. Paul. I am now and have been for 22 years the secretary of the water department of the city of St. Paul.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28th, 1894, in operation in this country according to my knowledge are as follows:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.  
Howard-Harrison Iron Company, Bessemer, Ala.  
Anniston Pipe & Foundry Company, Anniston, Ala.  
South Pittsburg pipe works, South Pittsburg, Tenn.  
Chattanooga foundry & pipe works, Chattanooga, Tenn.  
Dennis Long & Company, Louisville, Ky.  
Addyston Pipe & Steel Company, Cincinnati, O.  
Colorado Coal, Iron & Fuel Company, Pueblo, Colo.  
Oregon Iron & Steel Company, Oswego, Ore.  
Michigan Peninsular Car Mfg. Co., Detroit, Mich.  
Ohio Pipe Company, Columbus, O.

Lake Shore foundry, Cleveland, O.

219 J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, Ohio, and is now located at New Comerstown, Ohio.

Glamorgan Pipe & Foundry Company, Lynchburg, Va.  
National foundry & pipe works, Scottdale, Pa.  
R. D. Wood & Company, Philadelphia, Pa.  
The McNeil Pipe & Foundry Company, Burlington, N. J.  
Warren Foundry & Machine Company, Phillipsburg, N. J.  
Reading Iron Company, Reading, Pa.  
Buffalo Cast Iron Pipe Company, Buffalo, N. Y.  
Utica Pipe Foundry Company, Utica, N. Y.

Since December 28th, 1894, has purchased 3,947 tons of cast-iron water pipe and special castings, all of which has been purchased at prices which I consider fair and reasonable, and which were satisfactory to the city of St. Paul.

These purchases of cast-iron pipe were made from Dennis Long & Co., Louisville; Howard-Harrison Iron Co., Bessemer, Ala.; Ohio Pipe Co., Columbus, O., and Glamorgan Pipe & Foundry Co., of Lynchburg, Va.

In connection with the purchases of cast-iron pipe for the city of St. Paul, I have considered it my duty to keep posted in a general way of the condition of the pig-iron market from time to time. I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

JOHN CANEFIELD.

Subscribed and sworn to before me by John Canefield this 8 day of January, 1897.

[SEAL.]

(Signed)

J. B. WASCHENBERGER,  
Notary Public, Ramsey County, Minnesota.

220 *Affidavit of D. M. Allen. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE AND STEEL COMPANY ET AL. }

STATE OF INDIANA, }  
County of Clark. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared D. M. Allen, who being duly sworn, deposed as follows:

I am a citizen of Jeffersonville, Indiana. I am now and have been for eight (8) years the superintendent of the Jefferson- Water Supply Company, of Jeffersonville, Indiana.

The principal manufacturers of cast iron water and gas pipe and special castings that are now, and have been since December 28th, 1894, in operation in this country according to my knowledge are as follows:

- Shickle, Harrison & Howard Iron Co., St. Louis, Mo.
- Howard-Harrison Iron Company, Bessemer, Ala.
- Anniston Pipe & Foundry Company, Anniston, Ala.
- South Pittsburg pipe works, South Pittsburg, Tenn.
- Chattanooga foundry & pipe works, Chattanooga, Tenn.
- Dennis Long & Company, Louisville, Ky.
- Addyston Pipe & Steel Company, Cincinnati, O.
- Colorado Coal, Iron & Fuel Company, Pueblo, Colo.
- Oregon Iron & Steel Company, Oswego, Ore.
- Michigan Peninsular Car Mfg. Co., Detroit, Mich.
- Ohio Pipe Company, Columbus, O.
- Lake Shore foundry, Cleveland, O.
- J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, and is now located at New Comerstown, Ohio.
- Glamorgan Pipe & Foundry Company, Lynchburg, Va.
- National Pipe & Foundry Company, Scottdale, Pa.
- The McNeil Pipe & Foundry Company, Burlington, N. J.
- Warren Foundry & Machine Company, Phillipsburg, N. J.
- R. D. Wood & Company, Philadelphia, Pa.
- 221 Reading Iron Company, Reading, Pa.
- Buffalo Cast Iron Pipe Company, Buffalo, N. Y.
- Utica Pipe Foundry Company, Utica, N. Y.

Since December 28th, 1894, Dennis Long & Company, of Louisville, Kentucky, has furnished the Jeffersonville Water Supply Company its entire requirements of cast-iron water pipe and special castings, all of which has been furnished at prices which I consider

fair and reasonable, and which were satisfactory to the Jeffersonville Water Supply Company.

In connection with the purchases of cast-iron pipe for the Jeffersonville Water Supply Company, I have considered it my duty to keep posted as to the condition of the pig-iron market from time to time in a general way, I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed) JEFFERSONVILLE WATER SUPPLY  
CO.

D. M. ALLEN, *Supt.*

Subscribed and sworn to before me by D. M. Allen, this 5th day of January, 1897.

[SEAL.]

(Signed)

LULA PREEFER,  
N. P., C. C.

*Affidavit of John Martin. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

*vs.*

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF CALIFORNIA, }  
City and County of San Francisco, } ss :

Personally appeared before me, the undersigned Lincoln Sontage, a notary public, in and for the State and county aforesaid, John Martin, who, being duly sworn, deposed and said as follows :

I am a citizen of the town of Berkeley, in the county of Alameda, State of California, and the president of the Martin Pipe and Foundry Company, a corporation duly incorporated under the laws of the State of California, whose principal place of business is located in the city and county of San Francisco, California, engaged in the business of the purchase and sale of cast-iron pipe and other commodities.

In the prosecution of his own company's business, deponent further deposes and says, he has been for some years last past familiar with the market prices at which contracts to furnish cast-iron pipe have been let, and the prices and quotations made in open market competition, and generally with a number of pipe manufacturers in the United States and their facilities for filling orders. That since and before December 28th, 1894, affiant has been familiar in the prosecution of his business with the various pipe works in

operation in the United States, and has known of the quotations of prices of their output from the following, which have been in operation since that date: The Buffalo Cast Iron Pipe Company, and the Utica Pipe Foundry Company, of New York; McNeil Foundry & Pipe Company; the Warren Foundry and Machine Company, and R. D. Wood and Company of New Jersey; the Emans pipe foundry, the Jackson and Woodin Manufacturing Company; the Mellert Foundry Company (Limited), and the Reading Foundry Company, and National foundry and pipe works of Pennsylvania; the Glamorgan Company of Virginia; Dennis Long and Company of Kentucky; the Chattanooga foundry and pipe works, and the South Pittsburg pipe works of Tennessee; the Anniston Pipe and Foundry Company, and the Howard-Harrison Iron Company of Alabama; the Jim Hogg Pipe Foundry Company of Texas; the Addyston Pipe and Steel Co.; Clow and Sons; the Lake Shore Foundry Company, and the Ohio Pipe Company of Ohio; the Peninsular car foundry of Michigan; Shickle, Harrison-Howard Iron Company of Missouri; the Oregon Iron and Steel Company of Oregon, and certain other companies engaged in the manufacture of cast-iron pipe.

That since December 28th, 1894, affiant has contracted to furnish large amounts of pipe for consumption on the Pacific coast aggregating 12,091 tons, of which 1,521 tons consisted of soil pipe and fittings, and 10,570, tons of water and gas pipe.

Of this latter quantity 8,875 tons was purchased from the Anniston Pipe and Foundry Company, at prices ranging from \$14.20 to \$17.63 per ton of 2,000 pounds net, price f. o. b. at foundry on sizes from 6 inch to 30 inch, both inclusive, and 1,695 tons from other foundries at prices ranging from \$14.20 to \$19.10 per ton of 2,000 pounds net, price f. o. b. at foundry in sizes ranging from four inch to 18 inch, both inclusive.

This entire quantity of pipe was resold by affiant's company to consumers on the Pacific coast at a profit and in competition with many other foundries of the United States.

The lowest purchases were made by affiant at \$14.20 per ton, in the months of March and July, 1895, and November, 1896, and the sizes were 6", 8", 12" and 30". The highest purchase made by affiant was 100 tons 4-inch at \$19.10, in November, 1895.

The total amount of pipe sold on the Pacific coast from December 28th, 1894, to date, did not exceed 15,000 tons. The term "Pacific coast" is used to include the following States: Washington, Oregon, California, Nevada and Arizona.

That the prices at which said pipe has been purchased by affiant's company, and furnished by the said Anniston Pipe and Foundry Company, were the lowest that could be obtained in the open market from any of the pipe works in the United States, and that from affiant's knowledge and long experience with respect to the cost of manufacturing cast-iron pipe, the loss entailed and the capital required, affiant considers the prices at which said pipe, and each and all of it was purchased, as fair, reasonable and satisfactory, and affiant, from his experience, which is extended in these matters,

states from his knowledge that the prices paid could not, in the nature of things, the risk taken and capital required, etc., have been less, with a reasonable profit to the manufacturer. All affiant's dealings with said company, with respect to prices have been just, fair and moderate and no more than the article was worth in an open market.

Affiant is well acquainted with the market price of pipe on the Pacific coast, and the cost of manufacturing and the facts above stated are from long experience and dealings with said Anniston Company and various other manufacturers.

(Signed)

JOHN MARTIN.

Sworn to and subscribed before me, at San Francisco, State of California, on the 31st day of December, 1896.

[SEAL.]

(Signed)

LINCOLN SONNTAG,

*Notary Public in and for said City  
and County of San Francisco.*

224 *Affidavit of A. N. Denman. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF IOWA, }  
County of Polk. }

Before the undersigned, a notary public, in and for the State and county aforesaid, personally appeared A. N. Denman, who, being duly sworn, deposed as follows:

I am a citizen of Des Moines, Iowa. I am now and have been for sixteen years the secretary and manager of the Des Moines Water Works Company, of Des Moines, Iowa.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28, 1894, in operation in this country according to my knowledge are as follows:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.  
Howard-Harrison Iron Company, Bessemer, Ala.  
Anniston Pipe & Foundry Company, Anniston, Ala.  
South Pittsburg pipe works, South Pittsburg, Tenn.  
Chattanooga foundry & pipe works, Chattanooga, Tenn.  
Dennis Long & Company, Louisville, Ky.  
Addyston Pipe & Steel Company, Cincinnati, O.  
Colorado Coal, Iron & Fuel Company, Pueblo, Colo.  
Oregon Iron & Steel Company, Oswego, Ore.  
Michigan Peninsular Car Mfg. Co., Detroit, Mich.

Ohio Pipe Company, Columbus, O.

Lake Shore foundry, Cleveland, O.

J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, O., and is now located at New Comerstown, Ohio.

Glamorgan Pipe & Foundry Company, Lynchburg, Va.

National Pipe & Foundry Company, Scottdale, Pa.

R. D. Wood & Company, Philadelphia, Pa.

The McNeil Pipe & Foundry Company, Burlington, N. J.

Warren Foundry & Machine Company, Phillipsburg, N. J.

225 Reading Iron Company, Reading, Pa.

Buffalo Cast Iron Pipe Company, Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

Since December 28, 1894, Dennis Long & Company of Louisville, Kentucky, has furnished the Des Moines Water Works Company, 616 tons of cast-iron water pipe and special castings, all of which has been purchased at prices which I consider fair and reasonable, and which were satisfactory to the Des Moines Water Works Company.

In connection with the purchases of cast-iron pipe for the Des Moines Water Works Company I have considered it my duty to keep posted in a general way as to the condition of the pig-iron market from time to time, I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and I consider myself competent and qualified to decide whether or not the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

A. N. DENMAN.

Subscribed and sworn to before me by A. N. Denman this fourth day of January, 1897.

(Signed.)

ISAAC C. BALTHIS,

[SEAL.]

Notary Public in and for Polk County, Iowa.

*Affidavit of H. N. Wade. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF ILLINOIS, }

County of Kane. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared H. N. Wade, who being duly sworn deposed as follows:

I am the purchasing agent and general manager of the U. S.



226 Wind Engine & Pump Co., of Batavia, Kane Co., Ill., engaged among other things in the business of building and extending water works for municipalities and private corporations throughout the United States.

In the prosecution of his own business, he has been for years familiar with the prices with which contracts to furnish pipe have been let and with the number of pipe manufacturers in the United States.

That there has been since December 28, 1894, according to his knowledge, the following pipe works in operation :

Glamorgan Pipe & Foundry Company, Lynchburg, Va.

R. D. Wood & Co., Philadelphia, Pa.

Buffalo Cast Iron Pipe Co., Buffalo, N. Y.

Utica Pipe & Foundry Co., Utica, N. Y.

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.

Howard-Harrison Co., Bessemer, Ala.

Anniston Pipe & Foundry Co., Anniston, Ala.

Dennis Long & Company, Louisville, Ky.

South Pittsburg pipe works, So. Pittsburg, Tenn.

Chattanooga foundry & pipe works, Chattanooga, Tenn.

Addyston Pipe & Steel Company, Cincinnati, O.

Michigan Peninsular Car Mfg. Co., Detroit, Mich.

Ohio Pipe Company, Columbus, O.

Lake Shore foundry, Cleveland, O.

J. B. Clow & Sons, Chicago, Ill.

Jackson & Woodin Mfg. Co., Berwick, Pa.

That affiant has since December 28, 1894, contracted with some of the above foundries to furnish pipe for the purpose of constructing and extending water-works systems in amounts as follows :

From Ohio Pipe Co.....	512 tons
So. Pittsburg pipe works.....	912 "
Addyston P. & S. Co....	374 "
M. J. Drummond.....	223 "
Anniston Pipe & Foundry Co.....	78 "
Chattanooga foundry & pipe works.....	32 "
Lake Shore Foundry Co.....	43 "

That prices at which the above-mentioned pipe was furnished were the lowest that same could be obtained at from any of the pipe foundries mentioned above. That in all cases orders were awarded to the lowest bidder. During the past two years the prices have been steadily falling with some slight fluctuations due to natural causes.

(Signed)

H. N. WADE.

227 Subscribed and sworn to before me by H. N. Wade this 13th day of January, 1897.

(Signed)

A. D. MALLORY,

[SEAL.]

Notary Public in and for Kane County, Illinois.

*Affidavit of James Walsh. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF ILLINOIS, }  
County of Cook. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared James Walsh, who being duly sworn deposed as follows:

I am a citizen of Illinois. I am now and have been for four years the president of the Calumet Gas Company of Chicago, Illinois.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28, 1894, in operation in this country according to my knowledge are as follows:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.  
Howard-Harrison Iron Company, Bessemer, Ala.  
Anniston Pipe & Foundry Company, Anniston, Ala.  
South Pittsburg pipe works, South Pittsburg, Tenn.  
Chattanooga foundry & pipe works, Chattanooga, Tenn.  
Dennis Long & Company, Louisville, Ky.  
Addyston Pipe & Steel Company, Cincinnati, O.  
Colorado Coal, Iron & Fuel Company, Pueblo, Colo.  
Oregon Iron & Steel Company, Oswego, Ore.  
Michigan Peninsular Car Mfg. Co., Detroit, Mich.  
Ohio Pipe Company, Columbus, O.  
Lake Shore foundry, Cleveland, O.  
J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, O., and is now located at New Comerstown, Ohio.

228 Glamorgan Pipe & Foundry Company, Lynchburg, Va.  
National Pipe & Foundry Company, Scottdale, Pa.  
R. D. Wood & Company, Philadelphia, Pa.

The McNeil Pipe & Foundry Company, Burlington, N. J.  
Reading Iron Company, Reading, Pa.

Warren Foundry & Machine Company, Phillipsburg, N. J.

Buffalo Cast Iron Pipe Company, Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

Since December 28th, 1894, Dennis Long & Company, Louisville, Kentucky, has furnished the Calumet Gas Company 402 tons of cast-iron gas pipe and special castings, all of which has been pur-

chased at prices which I consider fair and reasonable, and which were satisfactory to the Calumet Gas Company.

In connection with the purchases of cast-iron pipe for the Calumet Gas Company I have considered it my duty to keep posted in a general way as to the condition of the pig-iron market from time to time, I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

JAMES WALSH.

Subscribed and sworn to before me by James Walsh this 13th day of January, 1897.

[SEAL.]

(Signed)

CHARLES HUNTOON,

Notary Public.

*Affidavit of James P. Donahue. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF IOWA, }  
County of Scott. }

Before the undersigned, a notary public in and for the 229 State and county aforesaid, personally appeared James P. Donahue, who being duly sworn deposed as follows:

I am a citizen of Davenport, Iowa. I am now and have been for over twelve (12) years the secretary and treasurer of the Davenport Water Company, of Davenport, Iowa.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now and have been since December 28th, 1894, in operation in this country according to my knowledge are as follows:

Howard-Harrison Iron Company, Bessemer, Ala.  
Anniston Pipe & Foundry Company, Anniston, Ala.  
South Pittsburg pipe works, South Pittsburg, Tenn.  
Chattanooga foundry & pipe works, Chattanooga, Tenn.  
Dennis Long & Company, Louisville, Ky.  
Addyston Pipe & Steel Company, Cincinnati, O.  
Colorado Coal, Iron & Fuel Company, Pueblo, Colo.  
Oregon Iron & Steel Company, Oswego, Ore.  
Michigan Peninsular Car Mfg. Co., Detroit, Mich.  
Ohio Pipe Company, Columbus, O.  
Lake Shore foundry, Cleveland, O.

J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, O., and is now located at New Comerstown, O.  
 Glamorgan Pipe & Foundry Company, Lynchburg, Va.  
 National Pipe & Foundry Company, Scottdale, Pa.  
 R. D. Wood & Company, Philadelphia, Pa.  
 The McNeil Pipe & Foundry Company, Burlington, N. J.  
 Warren Foundry & Machine Company, Phillipsburg, N. J.  
 Reading Iron Company, Reading, Pa.  
 Buffalo Cast Iron Pipe Company, Buffalo, N. Y.  
 Utica Pipe Foundry Company, Utica, N. Y.

Since December 28th, 1894, Dennis Long & Company of Louisville, Kentucky, has furnished the Davenport Water Company 593 tons of cast-iron water pipe and special castings, all of which has been purchased at prices which I consider fair and reasonable, and which were satisfactory to the Davenport Water Company.

In connection with the purchases of cast-iron pipe for the Davenport Water Company I considered it my duty to keep posted in a general way as to the condition of the pig-iron market from time to time. I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and I consider myself competent and qualified to decide whether or not the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

JAMES P. DONAHUE.

Subscribed and sworn to before me by James P. Donahue this sixth day of January, 1897.

[SEAL.]

(Signed)

LEE E. COLE,

*Notary Public in and for Scott County, State of Iowa.*

*Affidavit of W. H. Dillingham. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY. }

STATE OF INDIANA, }  
 County of Floyd. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared W. H. Dillingham, who being duly sworn deposed as follows:

I am a citizen of Louisville, Kentucky. I am now and have been for six years the president of the New Albany Water Works Company, of New Albany, Indiana.

The principal manufacturers of cast-iron water and gas pipe and

special castings that are now and have been since December 28th, 1894, in operation in this country according to my knowledge are as follows:

- Shickle, Harrison & Howard Iron Co., St. Louis, Mo.
  - Howard-Harrison Iron Company, Bessemer, Ala.
  - Anniston Pipe & Foundry Company, Anniston, Ala.
  - South Pittsburg pipe works, South Pittsburg, Tenn.
  - Chattanooga foundry & pipe works, Chattanooga, Tenn.
  - Dennis Long & Company, Louisville, Ky.
  - Addyston Pipe & Steel Company, Cincinnati, O.
  - Colorado Coal, Iron & Fuel Company, Pueblo, Colo.
  - Oregon Iron & Steel Company, Oswego, Ore.
  - 231 Michigan Peninsular Car Mfg. Co., Detroit, Mich.
  - Ohio Pipe Company, Columbus, O.
  - Lake Shore foundry, Cleveland, O.
  - J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, O., and is now located at New Comerstown, Ohio.
  - Glamorgan Pipe & Foundry Company, Lynchburg, Va.
  - National foundry & pipe works, Scottdale, Pa.
  - R. D. Wood & Company, Philadelphia, Pa.
  - The McNeil Pipe & Foundry Company, Burlington, N. J.
  - Warren Foundry & Machine Company, Phillipsburg, N. J.
  - Reading Iron Company, Reading, Pa.
  - Buffalo Cast Iron Pipe Company, Buffalo, N. Y.
  - Utica Pipe Foundry Company, Utica, N. Y.
- Since December 28th, 1894, the New Albany Water Works Company purchased from Dennis Long & Company, Louisville, Ky., its entire requirements of cast-iron gas pipe and special castings, all of which has been purchased at prices which I consider fair and reasonable, and which were satisfactory to the New Albany Water Works Company.

In connection with the purchases of cast-iron pipe for the New Albany Water Works Company I have considered it my duty to keep posted in a general way as to the condition of the pig-iron market from time to time, I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

W. H. DILLINGHAM.

Subscribed and sworn to before me by W. H. Dillingham, this 15th day of January, 1897.

[SEAL.]

(Signed)

FRANK P. SHEEHAN,  
Notary Public.

(My commission expires February 2nd, 1897.)

232 *Affidavit of John W. Rodgers. Filed by Defendants.*

(Endorsed:) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE &amp; STEEL COMPANY ET AL. }

STATE OF ILLINOIS, }  
County of Cook. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared John W. Rodgers, who being duly sworn deposed as follows:

I am a citizen of Evanston, Ill. I am now and have been for two years the treasurer and manager of the Northwestern Gas Light & Coke Company, of Evanston, Illinois.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now and have been since December 28th, 1894, in operation in this country according to my knowledge are as follows:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.  
Howard-Harrison Iron Company, Bessemer, Ala.  
Addyston Pipe & Steel Company, Cincinnati, O.  
Anniston Pipe & Foundry Company, Anniston, Ala.  
Chattanooga foundry & pipe works, Chattanooga, Tenn.  
Dennis Long & Company, Louisville, Ky.  
South Pittsburg pipe works, South Pittsburg, Tenn.  
Colorado Coal, Iron & Fuel Company, Pueblo, Colo.  
Oregon Iron & Steel Company, Oswego, Ore.  
Michigan Peninsular Car Mfg. Co., Detroit, Mich.  
Ohio Pipe Company, Columbus, O.  
Lake Shore foundry, Cleveland, O.  
J. B. Clow & Sons, Chicago, Illinois, whose foundry was first located at New Philadelphia, O., and is now located at New Comerstown, Ohio.

Glamorgan Pipe & Foundry Company, Lynchburg, Va.  
National Pipe & Foundry Company, Scottdale, Pa.  
R. D. Wood & Company, Philadelphia, Pa.  
The McNeil Pipe & Foundry Company, Burlington, N. J.  
Warren Foundry & Machine Company, Phillipsburg, N. J.  
233 Reading Iron Company, Reading, Pa.  
Buffalo Cast Iron Pipe Company, Buffalo, N. Y.  
Utica Pipe Foundry Company, Utica, N. Y.  
Since December 28th, 1894, Dennis Long & Company, Louisville, Kentucky, has furnished the Northwestern Gas Light & Coke Co. 963 tons of cast-iron gas pipe and special castings, all of which has been purchased at prices which I consider fair and reasonable, and



which were satisfactory to the Northwestern Gas Light & Coke Company.

In connection with the purchases of cast-iron pipe for the Northwestern Gas Light & Coke Company I have considered it my duty to keep posted in a general way as to the condition of the pig-iron market from time to time, I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

JOHN W. RODGERS.

Subscribed and sworn to before me by John W. Rodgers this 18th day of January, 1897.

[SEAL.]

(Signed)

TIMOTHY O'CONNELL,  
Notary Public.

*Affidavit of A. F. Callahan, J. K. Dimmick, and F. B. Nichols. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

STATE OF TENNESSEE, }  
Hamilton County. }

Personally appeared before me Crawford T. Johnson, dep. clerk A. F. Callahan, J. K. Dimmick, and F. B. Nichols, and made oath that they are thoroughly acquainted with the manufacture of cast-iron pipe, and they state that there are various reasons which account for differences in the price of pipe at different places in the United States.

They state that it is a fact that they estimate the cost of closing their works and not running for one month, from three to six thousand dollars per month, varying with the respective sizes of the plants of defendants. Besides, there are other disadvantages from  
234 closing down which cannot be estimated, such as the disorganization of their employes and laborers, etc.

So that when defendants have not contracts on hand at paying prices they can, in order to avoid shutting down, afford to sell pipe at such loss as would be less than the loss and disadvantage of shutting down. They also state that there is a large difference between the rate at which they can afford to sell ordinary pipe which they have on hand, and pipe which they are required to manufacture and deliver under specifications, fixing special tests, etc., such as set out in the St. Louis contract, and such as are usually a part of the requirements of the contracts in large cities.

They further state that it frequently happens that the drayage in large cities will amount to from thirty cents to two dollars per ton, all of which is to be taken into consideration, and which they cannot know in advance.

Affiants further state that in making these contracts there is usually

from five to twenty per cent. of the price retained for from thirty days to one year after completion of contract, as a guaranty fund, until after all the pipe is laid and subjected to the pressure and other tests, which tests are sometimes so unskillfully made as to burst pipe and cause large loss to the foundries.

It is also true that many of their contracts are upon bids made to furnish a year's supply of pipe to some city, without specifying the amount of pipe or time of delivery, and it has happened that during the years 1895 and 1896, and after such contracts were taken, the cost of pig iron has risen from three to three and one quarter dollars per ton.

And it often happens that after bidding on the supposition that they would be promptly paid, the purchaser on account of its failure to sell bonds, nor for other reasons, delayed payments from one to two years, and sometimes longer.

(Signed)

A. F. CALLAHAN.  
F. B. NICHOLS.  
J. K. DIMMICK.

Subscribed and sworn to before me, by A. F. Callahan, J. K. Dimmick and F. B. Nichols, this 25th day of January, 1897.

[SEAL.] (Signed) CRAWFORD T. JOHNSON, *Dep. Clk.*

235      *Affidavit of A. W. Walton. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF ALABAMA, }  
County of Calhoun. }

Personally appeared before me W. W. Whiteside, a notary public in and for the State and county aforesaid, the undersigned, A. W. Walton, who being duly sworn, deposed and saith as follows:

I am a citizen of the city of Rome, State of Georgia, and am the senior member of the firm of Walton & Wagner, a partnership engaged in contracting generally and especially in contracting throughout the Southern States, and the purchase of cast-iron pipe. The principal place of business of said firm is at Rome, in the State of Georgia.

In the prosecution of my business, I have for a number of years past, been familiar with the market prices at which contracts to furnish cast-iron pipe have been let, and the prices and quotations made, and have been at a great many lettings throughout the South. I am familiar with the location of the various pipe manufacturers of the United States and their facilities for filling orders.

In the prosecution of my business, I have become familiar with the various pipe works in operation in the United States, and have known of the quotations of prices and the output of the various plants, since December 28th, 1894.

The pipe manufacturers are as follows: The Buffalo Cast Iron Pipe Company, and the Utica Pipe Foundry Co. of New York; the McNeil Pipe & Foundry Co.; the Warren foundry & machine works, and R. D. Wood & Co., of New Jersey; the Emaus pipe foundry; the Jackson & Woodin Mfg. Co.; the Mellert Fdy. Co. (Limited); the Reading Foundry Co., and the National foundry & pipe works of Pennsylvania; the Glamorgan Co., of Virginia; Dennis Long & Co., of Kentucky; the Chattanooga fdy. & pipe works and the South Pittsburg pipe works of Tennessee; the Anniston Pipe & Foundry Co., and the Howard-Harrison Iron Co. of Alabama; 236 the Jim Hogg Pipe Foundry Co. of Texas; the Addyston Pipe & Steel Co.; Jas. B. Clow & Sons; the Lake Shore Foundry Co., and the Ohio Pipe Company of Ohio; the Peninsular car foundry of Michigan; the Shickle, Harrison & Howard Iron Co. of Missouri; the Oregon Iron & Steel Co. of Oregon, and certain other companies, all of which have been in active operation since December 28th, 1894. That since said date I have contracted with the Anniston Pipe & Foundry Co. of Anniston, Ala., and other pipe companies for large amounts of pipe, and among other purchases have made the following:

May, 1895, about two hundred and fifty tons delivered at Lindale, Floyd Co., Georgia, at twenty-two and  $\frac{5}{100}$  — per ton, water cast-iron pipe from Chattanooga foundry and pipe works.

May, 1896, about four hundred tons from Anniston Pipe & Foundry Co., delivered at Dublin, Ga., at \$24.00 per ton. Latter part of year 1894, about (600) six hundred tons from Chattanooga, delivered at Aiken, S. C., at \$24.00 per ton.

The prices at which said pipe, and all other pipe, which aggregated large amounts, have been purchased by me and furnished by the Anniston Pipe & Foundry Co. and others, are the lowest that could be obtained from any of the pipe works in the United States. From my knowledge and long experience, extending over a number of years past, respecting the cost of manufacturing cast-iron pipe, the loss entailed and the capital required, I consider the prices at which said pipe was purchased as fair, reasonable and just. From knowledge of such things I do not believe that the prices could reasonably have been less. The prices at which cast-iron pipe has sold since Dec., 1894, have uniformly been moderate, even low in a number of instances, much lower at all times than pipe could be purchased prior to that time.

(Signed)

A. W. WALTON.

Sworn to and subscribed before me at Anniston, State of Alabama, on this the 30th day of December, 1896.

[SEAL.]

(Signed)

W. W. WHITESIDE,

Notary Public.

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*Statement of M. L. Holman, Exhibit to Ans.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

OFFICE OF WATER COMMISSIONERS,  
St. Louis, January 18th, 1897.

Howard-Harrison Iron Company.

GENTLEMEN: In answer to your inquiry of the 15th inst., a copy of which is herewith attached, the following extracts from the records of this department have been made, viz:

Date of letting, April 12th, 1892.

Number of contract, 3224.

Tons of pipe advertised, 125.

Tons of pipe delivered, 169.05.

Contract price per ton, 24.95.

Total amount paid, 4,217.80.

Estimated cost per ton by department before the letting. Not recorded.

Date of letting, July 26th, 1892.

Number of contract, 3277.

Tons of pipe advertised, 2,200.

Tons of pipe delivered, 2,281.778.

Contract price per ton, 25.48.

Total amount paid, 58,139.70.

Estimated cost per ton by department before the letting, 27.00.

Date of letting, Oct. 11th, 1892.

Number of contract, 3376.

Tons of pipe advertised, 690.

Tons of pipe delivered, 722.62.

Contract price per ton, 25.48.

Total amount paid, 18,412.36.

Estimated cost per ton by department before the letting, 26.00.

Date of letting, Aug. 7th, 1894.

Number of contract, 3716.

Tons of pipe advertised, 7,140.

Tons of pipe delivered, 7,080.105.

Contract price per ton, 19.94.

Total amount paid, 141,177.29.

Estimated cost per ton by department before the letting, 20.00.

238 Date of letting, March 26th, 1895.

Number of contract, 3839.

Tons of pipe advertised, 3,327.

Tons of pipe delivered, 3,483.4289.

Contract price per ton, 19.85.

Total amount paid, 69,146.06.

Estimated cost per ton by department before the letting, 23.00.

Date of letting, May 17th, 1895.

Number of contract, 3950.

Tons of pipe advertised, 850.

Tons of pipe delivered, 851.57.

Contract price per ton, 20.96.

Total amount paid, 17,848.91.

Estimated cost per ton by department before the letting, 21.00.

Date of letting, Sept. 17th, 1895.

Number of contract, 4043.

Tons of pipe advertised, 6,350.

Tons of pipe delivered, 6,560.1555.

Contract price per ton, 22.47.

Total amount paid, 147,406.69.

Estimated cost per ton by department before the letting, 25.00.

Date of letting, Feb'y 4th, 1896.

Number of contract, 4087.

Tons of pipe advertised, 2,865.

Tons of pipe delivered, 2,947.3825.

Contract price per ton, 24.00.

Total amount paid, 70,737.18.

Estimated cost per ton by department before the letting, 25.00.

Date of letting, July 28th, 1896.

Number of contracts, 4350.

Tons of pipe advertised, 2,700.

Tons of pipe delivered, 2,632.3835.

Contract price per ton, 19.64.

Total amount paid, 51,700.01.

Estimated cost per ton by department before the letting, 24.00.

Date of letting, Oct. 6th, 1896.

Number- of contracts, 4420 and 4422.

Tons of pipe advertised, 10,010.

239 Tons of pipe delivered, 3,500.

Contract price per ton, 19.94.

Total amount paid, 62,811.00.

Estimated cost per ton by department before the letting, 20.00.

Not finished.

Respectfully,  
(Signed)

M. L. HOLMAN,  
Water Commissioner.

JANUARY 15TH, 1897.

Mr. M. L. Holman, water commissioner, city.

DEAR SIR: Will you please have the kindness to furnish us with a statement showing at what price the following contracts for cast-iron water pipe were awarded per ton, viz:

April 12th, 1892.....	125 tons.
July 12th, 1892.....	2,200 "
Oct. 11th, 1892.....	700 "
July 31st, 1894.....	7,140 "
May 17th, 1895.....	850 "
March 26th, 1895.....	3,327 "
Sept. 17th, 1895.....	6,350 "
Feb. 4th, 1896.....	2,865 "
July 28th, 1896.....	2,700 "
Oct. 6th, 1896.....	10,010 "

Also statement showing at what price per ton your estimate for these lottings was. Your prompt attention to this matter will be fully appreciated.

Yours truly,

HOWARD-HARRISON IRON  
COMPANY,  
By F. R. NICHOLS, V. P.

(Copy.)

*Copies of the Minutes of the Board of Public Works and Affairs in  
Nashville, Tennessee.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

OFFICE OF BOARD OF PUBLIC WORKS AND AFFAIRS,  
NASHVILLE, TENN., Tuesday, July 7th, 1896.

The board this day met in regular session all of the members being present.

The bids heretofore solicited for furnishing the city with  
240 water pipe and specials, lead, brick, fire-clay and sand, and  
lime and also valves and fire-hydrants were this day received  
and opened on motion referred to the superintendent of water works  
with request to tabulate the same and report in writing to the board  
who are the lowest and best bidders.

WEDNESDAY, July 8th, 1896.

The board this day met in regular session all of the members being present.

In response to the request of the board, made at its last meeting, the supt. of water works this day submitted the following communication, viz:

JULY 8TH, 1896.

Honorable board of public works and affairs:

GENTLEMEN: As instructed by your honorable board, I have examined the bids referred to me and submit the following report:

Pipe and specials.

	Pipe.	Specials.
Chattanooga foundry & pipe works. . . . .	\$21 50	\$2 25
Anniston Pipe & Foundry Co. . . . .	21 60	2 25
South Pittsburg & Foundry Co. . . . .	21 60	2 25
Howard Harrison-Howard Co. . . . .	21 70	2 25
R. D. Wood & Co. . . . .	22 30	
S. E. Jones' Sons. . . . .		2 00
Fort & Jakes. . . . .		2 50

Thereupon Geo. W. Stainback moved that the contracts for the various articles to be supplied to be awarded to the following, viz:

Water pipes to Chattanooga foundry & pipe w'ks.

Specials to S. E. Jones' Sons.



The above motion was adopted, Stainback and Kennedy voting aye, and Beazley no. Mr. Beazley in voting no stated that he did so because the bids were not received and opened in the usual way.

FRIDAY, *July 9th*, 1896.

The board this day met in regular session, all of the members being present.

J. L. Kennedy moved that the action taken by the board yesterday in accepting bids opened on the 7th inst. for pipe and  
241 specials, lead, valves and fire-hydrants and also for repairing the roof on the work-house stables be reconsidered. Carried.

Beazley and Kennedy voting aye, and Stainback, no.

J. L. Kennedy also moved that all said bids be declared off and that new bids be solicited, except for repairing work-house stable. Carried. Kennedy and Beazley voting aye and Stainback, no.

THURSDAY, *July 23*, 1896.

The board this day met in regular session, all of the members being present.

The bids again solicited for furnishing and delivering f. o. b. at Nashville about 160 tons of 6-inch water pipe and specials, were this day received and were as follows, viz :

	Pipe.	Specials.
J. H. Fall & Co.....	\$21.43	2
South Pittsburg pipe works.....	21.35	2½
S. E. Jones' Sons.....		2

The bid of the South Pittsburg pipe works for the water pipe and that of S. E. Jones' Sons for the specials, being the lowest bids submitted Beazley moved that the same be accepted. Carried. Kennedy and Beazley voting aye and Stainback, no.

TUESDAY, *October 6*, 1896.

The board this day met in regular session, all of the members being present.

Bids having heretofore been solicited for furnishing and delivering f. o. b. at Nashville 12-inch water pipe, lead, valves and specials, with a view of laying a 12-inch water main on West End avenue, from Bellmont avenue to Vanderbilt avenue, the following were received, viz :

	Pipe.	Specials.
Dennis Long & Co.....	\$21.65	2½
Addyston Pipe & Steel Co.....	21.30	2½
South Pittsburg pipe works.....	20.90	2
L. J. Lomasney & Co.....	20.40	
S. E. Jones' Sons.....		2

The bid of L. J. Lomasney & Co. for water pipe and that of S. E. Jones' Sons for specials, being the lowest bids submitted, J. L. Kennedy moved that the same be accepted. Carried. All voting aye.

The foregoing are true copies of the minutes of the board of public works and affairs.

[SEAL.]

(Signed)

F. E. KUHN, Sec'y.

*Affidavit of M. Liewellyn. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

Personally appeared before me, Henry O. Ewing, cl'k, M. Liewellyn, who being duly sworn deposed as follows :

That he is secretary and treasurer of the Chattanooga foundry & pipe works, and that he has held such position with defendant company for about twelve years. Affiant states that the business of the Chattanooga foundry & pipe works, is the manufacture of gas and water pipe and other supplies for water works, contractors, municipalities, railroads and others, that owing to the nature and method of purchasing said pipe and supplies that there is no fixed market price for pipe, and that contracts are secured in the main through advertisements or invitations from cities, corporations, or others to bid upon their special requirements, and that the specifications governing the manufacture of pipe are peculiar to the parties inviting bids, and in nearly all instances vary in their requirements to the extent that no two contracts are alike.

Affiant further states that on this account and the further fact that in nearly all cases where large contracts are taken, inspectors are sent by the purchaser to the point of manufacture and that the inspector having full control under the specifications governing the manufacture of the pipe and special castings, may and often does, reject such a large percentage of the pipe offered by the manufacturer, as to render such contracts undesirable. Frequently 10, 20, or even a larger percentage of pipe has been rejected by the inspector or work being done by defendant company. The percentage of rejection depending entirely upon the opinion of the inspector as to the quality of pipe offered, conforming to the requirements of the purchaser; this rejected pipe is a source of loss to the manufacturer except such as can be used as scrap, or sold upon its merits for railroad culverts or sewerage purposes.

As a direct illustration of the effect of inspection or a contract, affiant's company secured a large number of orders from a city located in an Eastern State, which was shipped under defendant company's own manner of manufacturing and inspection, resulting in complete satisfaction to the customer in all respects, as to quality, etc. Under orders of this nature the percentage of loss to defendant company was very small, being less than 1 per cent., while these orders were being shipped, defendant secured a large contract from the same parties, but the specifications provided for an inspector to be sent to the shop, under his construction of the specifications the loss of pipe to defendant was very large, being

for a portion of the time as high as 25 to 30 per cent., although all of the pipe shipped under both classes of inspection was precisely the same in character and quality.

Affiant further states that defendant company's capacity is about 40,000 tons of cast-iron pipe and special castings annually, and that in the prosecution of this business it gives employment to a large number of laborers, besides purchasing large quantities of material such as pig iron, coal, coke, hay, etc., all of which material is bought to a large extent from local furnaces, manufacturers, and dealers, but that owing to its large capacity it is necessary to seek a market for its product wherever such work may be offered, and owing to the limited demand for pipe in its immediate territory, it is compelled to solicit work from all parts of the United States, and must accept such prices for pipe and specials, as are fixed by the competition of others engaged in the business similar to that of defendant company.

Affiant states that there are about 20 other corporations or foundries engaged in the manufacture of cast-iron gas and water pipe besides the defendant companies, with a capacity of 2,000 to 3,000 tons per day, and that in the territory described by the prosecution there are nine other pipe works with a capacity of over 800 tons per day and that all of these shops can and do compete in the territory described. In all or nearly all of the contracts secured by affiant's company prices named on such contracts have been lower than prices offered by other manufacturers.

Affiant positively denies that his company by virtue of its location is enabled to manufacture cast-iron pipe cheaper than others engaged in a similar business, or that the cost of materials entering into its production, is less to the affiant's company than to its competitors, the price at which affiant's company can furnish pipe is determined

244 by the location of the contract and consequently the cost of transportation to destination is one of the elements of cost to affiant's company, and in many instances this determines as to the ability of affiant's company, to make such offers as will enable it to compete successfully with other manufacturers, who in many instances enjoy much less rates of freight to the point of delivery than does defendant company.

As an illustration showing the effect of freight rates on defendant's business, the rate on cast iron to points in New England is \$6.00 per ton from Chattanooga, while the rates from shops located in Pennsylvania is much less, approximating less than  $\frac{1}{2}$  of the rate from Chattanooga. Again, shops in Pennsylvania and New Jersey by virtue of the fact that they are located on tide water, can and do ship their pipe to points in defendant's immediate territory at very low rates of freight, viz: to Savannah, Charleston, Jacksonville, New Orleans and other southern ports, from affiant's experience and knowledge of the rates on cast-iron pipe, the cost of shipment by water to these ports is not over \$1.50 per ton, while the rates to these places from Chattanooga is about \$3.00 per ton, a clear advantage to the eastern shops in freight alone for \$1.50 per ton.

Any advantage which defendant company may possess, as to these

southern ports, owing to their favorable location or proximity to point of delivery is partially if not entirely overbalanced by this difference against them in freight rates.

Affiant further declares that the territory in which his company operates is subject to competition from the following manufacturers of east-iron pipe, viz :

Ohio Pipe Company, Columbus, Ohio.  
 Lake Shore foundry, Cleveland, Ohio.  
 J. B. Clow & Son, New Comerstown, Ohio.  
 Peninsular Car & Foundry Co., Detroit Mich.  
 Shickle, Harrison & Howard, St. Louis, Mo.  
 Rusk foundry, Rusk, Texas.  
 Oregon iron works, Portland, Oregon.  
 West Superior Iron Co., Duluth, Wis.  
 Colorado Iron & Fuel Co., Pueblo, Colo.  
 Donaldson Iron Co., Emaus, Pa.  
 Warren Foundry & Machine Co., Phillipsburg, N. J.  
 McNeil Pipe & Foundry Co., Burlington, N. J.  
 R. D. Wood & Co., Florence, Millville, Camden, N. J.  
 Reading Foundry Co., Ltd., Reading, Pa.  
 Jackson & Woodin, Berwick, Pa.  
 Buffalo Cast Iron Pipe Co., Buffalo, N. Y.  
 Glamorgan Iron Co., Lynchburg, Va.  
 National Pipe & Foundry Co., Ltd., Scottdale, Pa.  
 Utica Pipe Foundry Co., Utica, N. Y.

245 And others, that especially on all contracts for pipe in the Southern States defendant company can secure contracts only when they make lower prices or offer better inducements than other manufacturers, who have equal facilities for supplying pipe in said territory, and affiant further declares that in the majority of all such contracts secured by his company in said territory, others could have and did offer to furnish pipe; viz :

R. D. Wood & Co., Philadelphia, Pa.  
 Rusk foundry, Rusk, Texas.  
 Radford Pipe & Foundry Co., Radford, Va.  
 Glamorgan Company, Lynchburg, Va.  
 McNeil Pipe & Foundry Co., Burlington, N. J.  
 And others.

Affiant declares that in all other territory all contracts have been subject to competition of the twenty pipe manufacturers, (other than defendants), and that all contracts secured by his company has been for the reason that affiant's company offered to furnish the pipe for a lower price than his competitors.

Affiant further states that in the past ten years there has been been built and put into operation in the United States especially in the East and South, a number of pipe works, and that for this reason the capacity for supplying pipe has been in excess of the demand and that in fact without some restriction as to competition between these shops, it is affiant's belief that many would be forced out of operation resulting in a large loss of capital, and in a loss of employment to the large number of operatives.

In order to insure a proper amount of work being secured, or a fair proportion of that being offered, the defendant companies did on or about Dec., 1894, enter into an agreement with five other companies for the purpose of securing for defendant company such portion of work as would prevent them from being compelled to close their shops and in all probability to suspend operations until such time might arrive that the demand for pipe would increase to such a point as would guarantee all of the shops a full share of work, that this agreement was entered into by defendant company for the purpose as above stated, and not for the purpose as charged by the petitioner, namely "that of wrongfully and fraudulently procuring unreasonable and extortionate prices for pipe." Affiant was advised and did believe that such an arrangement was not contrary to any State or national law, and affiant further declares and states that the defendant company's books will show that the price for cast-iron pipe has been reduced by defendant company, for the past ten years, and defendant company has reduced the price of cast-iron pipe to its customers each year, and that defendant company's average prices for pipe for 1894, 1895 and 1896 are less than for the preceding years.

Affiant further declares that in a successful operation of the defendant company's business that it is necessary and essential that the tonnage of pipe made each year, shall be as large as possible in order to reduce the expenses of production to the minimum point, and that in order to dispose of the product of defendant company, it is necessary that it secure contracts for cast-iron pipe in any territory where it is possible for said company to procure work, and that in order to secure such contracts that defendant company is compelled to accept such prices for pipe as are from time to time fixed by its competitors in the territory in which defendant company may be operating at that time, that the defendant company has no influence or voice in fixing the price of pipe, but must either take work at prices fixed by this competition, or suspend operation until such time when the demand for pipe will guarantee a full supply of contracts to all engaged in a similar business with defendant company.

Affiant further states that he is familiar with the cost of manufacturing pipe, and that the machinery and tools required for the manufacture are peculiar to this class of business alone, and are in no way fixed for the manufacture of other materials, and that unless defendant company can operate its plant, tools, and machinery in the production of cast-iron pipe, its tools, machinery, patterns, etc., must be considered as a total loss, except such sums as it may bring when sold as scrap iron.

Affiant further declares and affirms that defendant company has not charged exorbitant or extortionate prices for cast-iron pipe, and that on the contrary, prices have been reasonable, affording only a fair profit to defendant company, and in many instances defendant company has been compelled to accept contracts and furnish pipe at such prices as did not afford it anything over or above the cost of manufacture, and that many contracts have been taken by de-

defendant company at very low prices for the only reason that by securing such work defendant company was enabled to operate their plant, whereas, had they not secured such contracts, the cost of manufacture would have been increased to such a point as would not have afforded any profit whatever to defendant company.

247 Affiant further declares that his company has kept their works in operation for the past twelve months, and have been unable to find a market for their product, owing to the restricted demand, that they have furnished work to a large number of men, without any reduction in wages, and that defendant company, not finding sales for their product have been compelled to hold its pipe in its yards, until at the present time this accumulation of pipe in company's yards has assumed large proportions and is in a manner burdensome on affiant's company, representing a very large outlay of money, paid out for labor, pig iron and other materials, approximating closely the sum of \$100,000.00, thus expended, and for relief from which large expenditures of capital defendant company is dependent entirely upon a revival of demand for its product.

Affiant further states that information has been furnished him by a number of defendant's customers, that propositions had been made them by J. E. McClure whereby they could recover sums of money from defendant company upon information papers and documents in his possession. Among this number affiant herewith attaches letters and other papers from the Abbott & Gamble Contracting Company.

Affiant states that defendant company sold to the Abbott & Gamble Contracting Company a quantity of cast-iron pipe about 800 tons, to be used in the extension of mains in the New Orleans water-works system. Affiant is informed and believes that the Abbott & Gamble Contracting Company were, and from recent conversation with them are, still satisfied with the prices of pipe furnished them, notwithstanding the statements and proposition of the said McClure.

(Signed)

M. LLEWELLYN.

Subscribed and sworn to before me, this 25th day of Jan'y, 1897.  
(Signed) HENRY O. EWING, *Clerk.*

248 *Affidavit of F. B. Nichols. Filed by Defendant.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

STATE OF KENTUCKY, }  
County of Jefferson. }

Personally appeared before me, the undersigned authority, F. B. Nichols and makes oath in due form of law that on January 18, 1897, he made application to W. C. Marshall, counselor for the city of St. Louis, for a statement of the dealings between the city of St. Louis and the Howard-Harrison Iron Co. in regard to the furnishing of cast-iron pipe to said city, and received in reply the statement hereto attached, marked Exhibit No. 1, which is signed by said Marshall, and affiant further makes oath that on application to the



water commissioner of St. Louis, Mr. Holman, as to the various lettings heretofore made by the city of St. Louis, received the statement hereto attached, marked Exhibit No. 2, which is signed by said Holman.

(Signed)

F. B. NICHOLS.

Sworn to and subscribed before me, Jan'y 18, 1897.

(Signed)

HERBERT BOONE,

*Notary Public, Jefferson County, Kentucky.*

My commission expires June 15th, 1897.

*Affidavit of Alexander Ross. Filed by Defendants.*

(Endorsed :) Filed Jan. 25, 1897. Henry O. Ewing, clerk.

STATE OF MISSOURI, }  
City of St. Louis, } ss :

Alexander Ross, being duly sworn, on his oath says, that he is now and has been for the past four years, secretary and general manager of the Laclede Gas Light Company of the City of St. Louis, Mo.; that said company, during the year 1896, made large purchases of cast-iron pipe of the Howard-Harrison Iron Co.; that said pipe gave satisfaction and was purchased by said Laclede Gas Light Co., at prices believed to be reasonable.

(Signed)

ALEXANDER ROSS.

Subscribed and sworn to before me, this 23rd day of Jan., 1897.

NETTIE MULTON,

*Notary Public.*

[SEAL.]

My commission expires April 16, 1899.

249 *Affidavit of E. C. Fuller. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF OHIO, }  
County of Montgomery, } ss :

Before the undersigned, a notary public, in and for the county and State aforesaid, personally appeared E. C. Fuller, who, being duly sworn, deposed as follows:

I am a citizen of Columbus, Ohio. I am now and have been for six (6) years, the president of the Ohio Pipe Company of Columbus, Ohio, which is a corporation engaged in the business of manufact-

ure of cast-iron water and gas pipe and special castings, and has been engaged in that business for fifteen (15) years.

I have read sections 3 and 10 of the petition in the suit of The United States against The Addyston Pipe & Steel Company, Cincinnati, Ohio; Dennis Long & Company, Louisville, Ky.; Howard-Harrison Iron Company, Bessemer, Ala.; Anniston Pipe & Foundry Company, Anniston, Ala.; South Pittsburg Pipe Works, South Pittsburg, Tenn., which suit was brought in the circuit court of the United States for the southern division of the eastern district of Tennessee, and which petition was filed December 10, 1896.

The allegations contained in said sections 3 and 10 are not true.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28, 1894, in operation in this country are as follows:

Shickle, Harrison & Howard Iron Company, St. Louis, Mo.

Howard-Harrison Iron Company, Bessemer, Ala.

Anniston Pipe & Foundry Company, Anniston, Ala.

South Pittsburg, Tenn.

Chattanooga foundry & pipe works, Chattanooga, Tenn.

Dennis Long & Company, Louisville, Ky.

Addyston Pipe & Steel Company, Cincinnati, O.

250 Colorado Coal, Iron & Fuel Company, Pueblo, Colo.

Oregon Iron & Steel Company, Oswego, Ore.

Michigan Peninsular Car Mfg. Co., Detroit, Mich.

Ohio Pipe Company, Columbus, Ohio.

Lake Shore foundry, Cleveland, O.

J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, Ohio, and is now located at New Comerstown, Ohio.

Glamorgan Pipe & Foundry Company, Lynchburg, Va.

National foundry & pipe works, Scottsdale, Pa.

R. D. Wood & Company, Philadelphia, Pa.

The McNeil Pipe & Foundry Company, Burlington, N. J.

Warren Foundry & Machine Company, Phillipsburg, N. J.

Reading Iron Company, Reading, Pa.

Buffalo Cast Iron Pipe Company, Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

The Ohio Pipe Company now has, and during the years 1895 and 1896 had, a daily capacity of one hundred tons of cast-iron water and gas pipe and special castings. It had now and had during the years 1895 and 1896, an ample capital for the vigorous and successful conduct of its business. The Ohio Pipe Company was during the years 1895 and 1896 an active competitor of the six defendants in the suit above referred to for orders in the territory named in said section 3 of said petition above referred to, and secured during the years 1895 and 1896 its reasonable proportion of the orders in said territory.

A very large proportion of the orders which are placed for cast-iron pipe are placed after advertising for bids and receiving proposals which were opened in the presence of, and read to, the bidders; even when bids are not solicited by a regular advertisement, but by spe-

cific invitation by letter or otherwise to each bidder, the orders are in most cases given to the lowest bidder. I am therefore in position to know that a very large proportion of the orders secured during the years 1895 and 1896 by the six defendants in the suit above referred to, were taken at prices which were not only fair and reasonable and such as would not leave the manufacturer more than a very moderate margin of profit, but that on many of the orders the prices were so low as not to leave a reasonable margin of profit to the manufacturer.

(Signed)

EDWARD C. FULLER.

251 Subscribed and sworn to before me by Edward C. Fuller this eleventh day of January, 1897.

ROY G. FITZGERALD,

[SEAL.]

Notary Public, Montgomery County, Ohio.

*Affidavit of J. A. Brockhoff. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF OHIO, }  
County of Hamilton. }

Personally appeared before me, Geo. W. Fisher, J. of P., a justice of the peace in and for said State and county, the undersigned, J. A. Brockhoff, clerk of the Norwood water works, the same being the city water works of Norwood, State of Ohio, who, being sworn, doth depose and say as follows:

That the Norwood water works have purchased from the Anniston Pipe and Foundry Company, of Anniston, Alabama, cast-iron water pipe and specials, during the calendar years 1895 and 1896, at and for the following prices:

During 1895, cast iron water pipe, \$17.84 per ton and specials at 2 cents per lb. During 1896, pipe at \$20.00 per ton, specials at 2½ cents per lb.

That deponent is familiar in a general way and has been so familiar during the period of such purchases (above mentioned) with the prevailing market prices and quotation of prices made upon cast-iron water pipe and with the facilities of the different pipe manufacturers of the country for filling orders for pipe for the Norwood water works; that the prices at which said pipe was furnished by the Anniston Pipe & Foundry Co., of Anniston, Ala., to the Norwood water works are deemed and considered by him to be reasonable and moderate. The dealings between the Norwood water works and said Anniston Pipe and Foundry Co., have been satisfactory both with

252 respect to the pipe furnished and the prices charged therefor, and in the judgment of deponent, the pipe could not have been purchased cheaper, taking into consideration the cost of production and the usual and natural risks incident thereto, and in all respects the prices were quite moderate.

(Signed)

J. A. BROCKHOFF,  
Clerk of Trustees Water Works.

Sworn to and subscribed before me at Norwood, State of Ohio, on this the 21st day of Jan., 1897.

GEO. W. FISHER,  
Justice of the Peace for Columbia Town-  
ship, Hamilton County, Ohio.

*Affidavit of Herman Erdman and Louis Winkleman. Filed by  
Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the  
Eastern District of Tennessee.

UNITED STATES  
vs.  
ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF OHIO, }  
County of Hamilton. }

Personally appeared before me Geo. W. Fisher, a justice of the peace in and for said State and county, the undersigned, Herman Erdman, Louis Winkleman, trustees of the Norwood water works, the same being the city water works of Norwood, State of Ohio, who, being each sworn, doth depose and say as follows:

That the Norwood water works have purchased from the Anniston Pipe & Foundry Company of Anniston, Alabama, cast-iron water pipe and specials during the calendar years 1895 and 1896, at and for the following prices:

During 1895, cast-iron water pipe at \$17.84 per ton.

During 1895, specials, at 2c. per pound.

During 1896, cast-iron water pipe, at \$20.00 per ton.

During 1896, specials, at 2½c. per pound.

253 That deponents are familiar in a general way and have been so familiar during the period of such purchases (above enumerated) with the prevailing market prices, and quotation of prices made upon cast-iron water pipe, and with the facilities of the different pipe manufacturers in the country for filling orders for pipe for the Norwood water works; that the prices at which said pipe was furnished by the Anniston Pipe & Foundry Company of Anniston, Alabama, to the Norwood water works, are deemed and considered by each of them, the said deponents, to be reasonable and moderate. The dealings between the Norwood

water works and said Anniston Pipe & Foundry Company have been satisfactory, both with respect to the pipes furnished and the prices charged therefor, and in the judgment of the deponents the pipe could not have been purchased cheaper, when the cost of manufacture and the usual and natural risks incident thereto are properly considered, and the prices charged by said company were normal with respect to the market and cost of production and were and are satisfactory to the water works.

(Signed)

HERMANN ERDMAN.  
LOUIS WINKELMAN.

Sworn to and subscribed to before me, at Norwood, Ohio, State of Ohio, on this the 21st day of Jan., 1897.

GEORGE W. FISHER,  
*Justice of the Peace for Columbia Township,  
Hamilton County, Ohio.*

*Affidavit of Warren Case. Filed by Defendants.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES  
vs.  
ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF ILLINOIS, }  
*Morgan County.* }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared Warren Case, who, being sworn, deposed as follows:

I am a citizen of Jacksonville, Illinois. I am now and have been for one and one-half years city comptroller of Jacksonville. Since December 28th, 1894, the city of Jacksonville has purchased from South Pittsburg pipe works, South Pittsburg, Tenn., thirty-  
254 three (33) tons of pipe and from Chattanooga foundry and pipe works, Chattanooga, Tenn., one hundred and forty-seven (147) tons of pipe.

All of which has been purchased at prices which proved to be the lowest that could be obtained, and from affiant's knowledge of the variations of the pig-iron market, the cost of manufacturing pipe, capital required, etc., affiant considers said prices as fair, reasonable and satisfactory, to the city officials of Jacksonville.

(Signed)

WARREN CASE.

Subscribed and sworn to before me by Warren Case this 19th day of January, A. D. 1897.

[SEAL.]

CHARLES G. RUTLEDGE,  
*Notary Public in and for Morgan County, Illinois.*

*Affidavit of Geo. W. Morris. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF KENTUCKY, }  
County of Jefferson. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared Geo. W. Morris, who, being duly sworn, deposed as follows :

I am a citizen of Louisville, Ky. I am now and have been for twelve years the president of the Louisville Gas Company, of Louisville, Kentucky.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now and have been since December 28th, 1894, in operation in this country according to my knowledge are as follows :

- Shickle, Harrison & Howard Co., St. Louis, Mo.
  - Howard-Harrison Iron Company, Bessemer, Ala.
  - Anniston Pipe & Foundry Company, Anniston, Ala.
  - South Pittsburg pipe works, South Pittsburg, Tenn.
  - Chattanooga foundry & pipe works, Chattanooga, Tenn.
  - Dennis Long & Company, Louisville, Ky.
  - Addyston Pipe & Steel Company, Cincinnati, O.
  - 255 Colorado Coal, Iron & Fuel Company, Pueblo, Colo.
  - Oregon Iron & Steel Company, Oswego, Ore.
  - Michigan Peninsular Car Mfg. Co., Detroit, Mich.
  - Ohio Pipe Company, Columbus, O.
  - Lake Shore foundry, Cleveland, O.
  - J. B. Clow & Sons, Chicago, Illinois, whose foundry was first located at New Philadelphia, O., and is now located at New Comerstown, Ohio.
  - Glamorgan Pipe & Foundry Company, Lynchburg, Va.
  - National Pipe & Foundry Company, Scottdale, Pa.
  - R. D. Wood & Company, Philadelphia, Pa.
  - The McNeal Pipe & Foundry Company, Burlington, N. J.
  - Warren Foundry & Machine Company, Phillipsburg, N. J.
  - Reading Iron Company, Reading, Pa.
  - Buffalo Cast Iron Pipe Company, Buffalo, N. Y.
  - Utica Pipe Foundry Company, Utica, N. Y.
- Since December 28th, 1894, the Louisville Gas Company has purchased from Dennis Long & Company, Louisville, Kentucky, its entire requirements of cast-iron gas pipe and special castings, all of which has been purchased at prices which I consider fair and reasonable, and which were satisfactory to the Louisville Gas Company.
- In connection with the purchases of cast-iron pipe for the Louis-



ville Gas Company, I have considered it my duty to keep posted in a general way as to the condition of the pig-iron market from time to time. I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

GEO. W. MORRIS.

Subscribed and sworn to before me by Geo. W. Morris this 15th day of January, 1897.

WM. P. LEE,  
N. P., J. C., Ky.

Commission expires Jan'y 9, '98.

256 *Affidavit of F. M. Cappelen. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTONE PIPE & STEEL COMPANY ET AL.

STATE OF MINNESOTA, }  
County of Hennepin. }

Before the undersigned, a notary public, in and for the State and county aforesaid, personally appeared F. M. Cappelen, who, being duly sworn, deposed as follows:

I am a citizen of Minneapolis, Minn. I am now, and have been for four years, the city engineer of the city of Minneapolis.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28th, 1894, in operation in this country, according to my knowledge, are as follows:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.

Howard-Harrison Iron Co., Bessemer, Ala.

Anniston Pipe & Foundry Co., Anniston, Ala.

South Pittsburg pipe works, South Pittsburg, Tenn.

Chattanooga foundry & pipe works, Chattanooga, Tenn.

Dennis Long & Co., Louisville, Ky.

Addyston Pipe & Steel Co., Cincinnati, Ohio.

Colorado Coal, Iron & Fuel Co., Pueblo, Colo.

Oregon Iron and Steel Company, Oswego, Ore.

Michigan Peninsular Car Mfg. Co., Detroit, Mich.

Ohio Pipe Co., Columbus, Ohio.

Lake Shore foundry, Cleveland, Ohio.

J. B. Clow & Sons, Chicago, Ill., whose foundry was formerly

located at New Philadelphia, Ohio, and is now located at New Comerstown, Ohio.

Glamorgan Pipe & Foundry Company, Lynchburg, Va.

National foundry & pipe works, Scottsdale, Pa.

R. D. Wood & Company, Philadelphia, Pa.

The McNeal Pipe & Foundry Co., Burlington, N. J.

Warren Foundry & Machine Co., Phillipsburg, N. J.

Reading Iron Company, Reading, Pa.

Buffalo Cast Iron Pipe Co., Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

257 Since December 28th, 1894, the city of Minneapolis has purchased 5,003 tons of cast-iron water pipe and special castings, all of which has been purchased at prices which I consider fair and reasonable, and which were satisfactory to the city of Minneapolis.

These purchases of cast-iron pipe were made from Dennis Long & Company of Louisville, Ky., and Michigan Peninsular Car Co., Detroit, Mich.

In connection with the purchases of cast-iron pipe for the city of Minneapolis, I have considered it my duty to keep posted in a general way of the condition of the pig-iron market from time to time, I have a general knowledge of the process of manufacturing cast-iron pipe, and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

F. M. CAPPELEN,

*City Eng'r, Minneapolis, Minn.*

Subscribed and sworn to before me, by F. M. Cappelen, this 8th day of January, 1897.

[SEAL.]

ROBT L. COX,

*Notary Public, Hennepin Co., Minn.*

*Affidavit of G. Jaeger. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF MISSOURI, } ss:  
County of Bates,

Before the undersigned, a notary public, in and for the State and county aforesaid, personally appeared G. Jaeger, who, being duly sworn, deposed as follows:

I am a citizen of Rich Hill and have been, for ten years, engaged in the business of contracting water works throughout the United States. In the prosecution of my business I have been for years familiar with prices at which contracts to furnish pipe have been let, and I had dealings and correspondents with the following foundries:

Shickie, Harrison & Howard, St. Louis, Mo.  
 Lake Shore Foundry Co., Cleveland, Ohio.  
 Addyston Pipe & Steel Co., Cincinnati, Ohio.  
 R. D. Wood & Co., Philadelphia, Pa.  
 Anniston Pipe & Foundry Co., Anniston, Ala.  
 Howard-Harrison Iron Co., Bessemer, Ala.  
 Chattanooga foundry & pipe works, Chattanooga, Tenn.  
 South Pittsburg pipe works, South Pittsburg, Tenn.

I have contracted since Dec. 24th, 1894, with South Pittsburg pipe works, and Anniston Pipe Foundry Co., to furnish the pipe for the purpose and amount as follows:

Cameron, Tex., 400 tons, South Pittsburg pipe works.  
 Chanute, Ka., 800 tons, Anniston Pipe Foundry Co.  
 Greenville, Miss., 1,100 tons, South Pittsburg pipe works.

The same having been used to construct water works in said towns. The price at which the above pipe was furnished to me were the lowest that could be obtained from any of the pipe works I had correspondence with, and taking freight rates, quality, prompt delivery and terms of payment in consideration, I consider the prices reasonable and satisfactory.

(Signed)

G. JAEGER.

Sworn and subscribed to before me this 22nd day of January, 1897.

[SEAL.]

SILAS M. DOOLEY,  
*Notary Public.*

My commission expires April 9th, 1897.

*Affidavit of A. H. Davidson. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

STATE OF GEORGIA, }  
 County of Richmond. }

Personally appeared before me, the undersigned notary public, for the State and county aforesaid, A. H. Davidson, who, being duly sworn, deposed as follows: That he is city engineer for the city of Augusta, Ga. He states that he had, since December 28th, 1894, bought about (167) one hundred and sixty-seven tons of cast-iron pipe from the Chattanooga foundry & pipe works. And that he received bids from Anniston foundry & pipe works of Anniston, Ala.; Howard Harrison Iron Co. of Bessemer, Ala.; R. D. Wood & Co., of Philadelphia, Pa.; Chattanooga foundry & pipe works, of Chattanooga, Tenn.; C. A. Robbe, of Augusta, Ga., and

Walton & Wagner, of Rome, Ga. That said pipe was to be delivered at Augusta, Ga., and was subject to the usual specifications, and that any pipe not conforming to said specifications was subject to rejection. In all cases the pipe was to be delivered at Augusta, Ga., any broken or rejected pipe was to be replaced by said Chattanooga foundry & pipe works. That the prices charged him by said Chattanooga foundry & pipe works, was, to the best of his knowledge and belief, and according to his information, fair and reasonable and afforded no more than a reasonable profit.

(Signed)

A. H. DAVIDSON,  
*City Engineer.*

Sworn to and subscribed to before me, the 12th day of January, 1897.

[SEAL.]

PHILIP C. NORTH,  
*Notary Public, Richmond Co., Ga.*

*Affidavit of Duncan Jones, Who, Being Duly Sworn, Deposed as Follows,  
Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the  
Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF LOUISIANA, }  
Parish of Orleans. }

Before the undersigned, a notary public in and for the parish aforesaid, personally appeared Duncan Jones, who, being duly sworn, deposed as follows:

I am a citizen of New Orleans, Louisiana, I am secretary of the New Orleans Gas Light Company, which is located and doing business in the city of New Orleans, Louisiana. It is my business to purchase all supplies for the company above mentioned, and since December 28, 1894, my company purchased from the South Pittsburg pipe works the following amounts of cast-iron pipe:

April 3, 1895...	34 tons.	Oct. 10, 1895.....	17 tons.
" 4, 1895.....	35 "	Mar. 16, 1896.....	18 "
" 5, 1895.....	16 "	Oct. 9, 1896.....	17 "
" 9, 1895.....	14 "	Oct. 12, 1896.....	20 "

Affiant further says that on account of his position as secretary of the New Orleans Gas Light Company he became familiar with the prices of cast-iron pipe and knew the market value thereof; that the prices at which the above material was purchased were entirely

satisfactory to our company and affiant considers said prices to be fair and reasonable.

Affiant further states that the prices at which his company purchased pipe during the year- '95 and '96 were much lower than the prices of any of its previous purchases during the years 1891, 1892, 1893 and 1894.

(Signed)

DUNCAN JONES.

Subscribed and sworn to before me by Duncan Jones this 18th day of Jan'y, 1897.

FRED ADOLPH,

[SEAL.] *Notary Public in and for Orleans Parish, Louisiana.*

*Affidavit of H. M. Lofton. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

*vs.*

ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF GEORGIA, }  
County of Chatham. }

Personally appeared before me, the undersigned (notary public) in and for the State and county aforesaid, H. M. Lofton, who, being duly sworn, deposed as follows:

I am a citizen of Savannah and supt. of the Savannah water works, which is located at Savannah, Ga., engaged in the business of furnishing water, the city and private consumers.

261 In the prosecution of his own business he has been for years familiar with the prices at which contracts to furnish pipe have been let, and with a number of pipe manufacturers in the United States.

That there have been since Dec. 28, 1894, according to my knowledge the following pipe works in operation:

The affiant has since Dec. 28, 1894, contracted with South Pittsburg pipe works, etc., etc., etc., to furnish pipe for the purposes and in the amounts as follows: three hundred tons water pipe.

The prices at which said pipe were furnished were the lowest that could be obtained from any of the pipe works in the United States, and from affiant's knowledge of the cost of manufacturing pipe, the capital required, etc., affiant considers the prices stated as fair, reasonable and satisfactory.

(Signed)

H. M. LOFTON.

Subscribed and sworn to before me this 14th day of January, 1897.

C. V. HERNANDEZ,  
*Notary Public, C. C., Ga.*

[SEAL.]

*Affidavit of Louis Z. Baya. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

STATE OF FLORIDA, }  
County of Duval. }

Personally appeared before me, the undersigned notary public for the State and county aforesaid, Louis Z. Baya, who, being duly sworn, deposed as follows: That he was secretary and treasurer of the Citizens' Gas & Electric Company, of Jacksonville, Fla., prior to March 1, 1896. He states that he has since December 28, 1894, bought about (121) one hundred and twenty-one tons of cast-iron pipe and that he had received bids from the Chattanooga foundry & pipe works, and other manufacturers of pipe. That said pipe was to be delivered at Jacksonville, Florida, and was to be subject to the usual specifications, and that any pipe not conforming to said specifications was subject to rejection. In all cases pipe was to be delivered at Jacksonville, Florida, and any broken or re-  
262 jected pipe was to be replaced by said Chattanooga foundry and pipe works. That the price charged him by the said Chattanooga foundry and pipe works was, to the best of his knowledge and belief, and according to his information, fair and reasonable and afforded no more than a reasonable profit in doing such work.

(Signed)

LOUIS Z. BAYA.

Sworn to and subscribed before me this 11th day of January, A. D. 1897.

[SEAL.]

J. H. HORTON,  
Notary Public.

*Affidavit of A. F. Callahan. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON STEEL & PIPE CO. ET AL. }

Affidavit of A. F. Callahan.

STATE OF KENTUCKY, }  
County of Jefferson. }

Personally appeared before me, William Sackett, a notary public in and for the State and county aforesaid, A. F. Callahan, and being duly sworn deposed as follows:

I am vice-president of the corporation of Dennis Lou- & Company,



and have been since September 9th, 1895. From February 8th, 1894, to September 9th, 1895, I was secretary and treasurer of Dennis Long & Company, and from August 6th, 1891, to February 8th, 1894, I was secretary of Dennis Long & Company. As an officer of Dennis Long & Company, I was prior to the latter part of December, 1894, actively engaged in pushing the business of said company and endeavoring to secure contracts to supply cast-iron pipe. The greater portions of said contracts were let after advertising for bids and inviting competition on each sale from all the manufacturers of cast-iron pipe in the United States, whose capacity aggregated not less than twenty-five hundred (2,500) tons daily. This capacity was greatly in excess of the demand, and there resulted a destructive competition upon practically every contract offered; prices were depressed to such an extent that practically all of the pipe was being sold at prices which did not give the manufacturers a profit.

The following are the principal manufacturers of cast-iron water and gas pipe which are now, and which have been for some years in operation in this country, to wit:

- Shickle, Harrison & Howard Iron Co., St. Louis, Mo.
- Howard-Harrison Iron Company, Bessemer, Ala.
- Anniston Pipe & Foundry Co., Anniston, Ala.
- South Pittsburg pipe works, South Pittsburg, Tenn.
- Chattanooga foundry & pipe works, Chattanooga, Tenn.
- Dennis Long & Company, Louisville, Ky.
- Addyston Pipe & Steel Co., Cincinnati, O.
- Colorado Coal, Iron & Fuel Company, Pueblo, Colo.
- Oregon Iron & Steel Co., Oswego, Ore.
- Michigan Peninsular Car Co., Detroit, Mich.
- Ohio Pipe Co., Columbus, O.
- Lake Shore foundry, Cleveland, O.
- J. B. Clow & Sons, Chicago, Ill., whose foundry was first located at N. Philadelphia, O., and is now located at New Comerstown, O.
- Glamorgan Pipe & Foundry Co., Lynchburg, Va.
- National foundry & pipe works, Scottdale, Pa.
- R. D. Wood & Co., Philadelphia, Pa.
- The McNeal Pipe & Foundry Co., Burlington, N. J.
- Warren Foundry & Machinery Co., Phillipsburg, N. J.
- Reading Iron Company, Reading Pa.
- Buffalo Cast Iron Pipe Company, Buffalo, N. Y.
- Utica Pipe Foundry Co., Utica, N. Y.

During the latter part of December, 1894, Dennis Long & Company agreed with the other defendants in this suit to form an association for mutual benefit, the object and intention of such association being to maintain fair prices to regulate credits and to accomplish an equitable distribution of such orders as the six defendants could secure in competition with the other manufacturers of cast-iron pipe. This association was abandoned in May, 1895, for one which it was considered would better accomplish the results desired, and said association was in existence from that date until September, 1896.

As the representative of Dennis Long & Company in forming said association, I affirm that in its formation there was no reference to, or thought of, interstate commerce, and I did not at that time know the legal meaning of the terms "interstate commerce."

264 In forming said association there was no purpose or agreement to restrain the trade of any of defendants, or of their competitors, but it was the intention of said association, by regulating to a certain extent the competition among the defendants only, to endeavor to maintain fair prices, and to secure for each of defendants a fair proportion of the orders in a certain territory.

Under the conditions of the association formed during the latter part of December, 1894, every order taken by any of defendants in a certain territory was subject to a charge of a certain small proportion of the prices obtained for the respective orders, and at stated intervals there were settlements between the defendants based upon these debits against the respective defendants upon the orders they had previously taken, these settlements being in the nature of clearances, charging each defendant upon the orders taken by it and crediting it with its agreed proportion upon the orders taken by the other defendants, the effect of such settlements being to practically establish a balance between all of defendants without the payment of any money whatever, unless some of defendants had taken more than their fair and normal proportion of the total tonnage of orders that those defendants had been able to obtain in competition with the other manufacturers.

Under the conditions of the association agreed upon in May, 1895, the privilege to these defendants of endeavoring to secure each order that offered, was regulated by voluntary offers from each defendant of such amount as it was willing to be charged with, out of the price received for the order, if secured. These voluntary offers from defendants were each based upon such prices for the respective orders as these defendants considered would be fair and reasonable prices, and the privilege of endeavoring to secure the order was in each case granted to that defendant which made the largest voluntary offer as above indicated.

The premiums or bonuses so offered were debited against the respective defendants upon such orders as they actually secured, and clearance settlements upon these debits were made at stated intervals in the same manner as under the agreement of December, 1894.

Affiant positively denies that such premiums or bonuses were added to whatever price defendants could force their customers to pay, or that it was a sum over and above a fair and reasonable price, or that it was a sum over and above the price at which the defendants would have sold the pipe if the association had not

265 existed. On the contrary, affiant affirms that such premiums or bonuses did not fix or regulate the prices charged for pipe, but that the prices were in every instance regulated by the competition with the large number of competitors other than these defendants, and while, under the agreement of May, 1895, the premiums or bonuses offered by defendants were, as to each order, based upon such price as defendants agreed would be fair and rea-

sonable for such order, affiant distinctly avers that every one of defendants had the right to, and was expected to, bid for the respective orders such prices as in its judgment would be necessary to obtain the order in competition with the other manufacturers.

Affiant further states that unless the premium or bonus had been deducted from what was a fair and reasonable price, it could not have operated to effect such a regulation of the competition among these defendants, and such an equitable distribution of the orders, as the association had in view, for if the premiums or bonus had been an amount in excess of a fair and reasonable price, there would be no inducement to any of these defendants to allow the other defendants to obtain a full share of the orders.

Under said association each defendant retained absolute control of its business just as before the association was formed, and each defendant owned absolutely all the pipe it manufactured, nor did it vest in the association, or any central committee thereof, the right to control it in the operation of its business.

Affiant further states that the records of the association from January 1st, 1896, to September, 1896, show that during this period the total number of orders which these defendants endeavored to secure in the territory detailed in section 3 of the petition in this suit, was not less than twelve hundred (1,200), and that of said orders these defendants only succeeded in securing four hundred and fifty-seven (457).

Affiant further states, that upon the total shipments by all of defendants in the territory named in section 3 of said petition during the year 1895, the actual clearance settlements amounted to only thirty-eight (38) cents per ton; upon the total shipments by said defendants in said territory, from January 1st, 1895, to September 15th, 1896, said actual clearance settlements only amounted to fifty-eight (58) cents per ton and the actual clearance settlements of this large period would have been materially less than 58 cents per ton,

but for the fact that by reason of the extreme general depression of business during the latter half of 1896, the demand for cast-iron pipe almost ceased.

Affiant further states that among the customers of Dennis Long & Company, during the years 1895 and 1896, no complaint whatever has been received as to the prices which have been charged; and, on the contrary, he (affiant) positively affirms that the price at which Dennis Long & Company has furnished pipe during the years 1895 and 1896, have been fair and reasonable, and have been without exception satisfactory to the buyers of said pipe.

(Signed)

A. F. CALLAHAN.

Subscribed and sworn to before me, by A. F. Callahan, this 23rd day of January, 1897.

[SEAL.]

WM. SACKETT,  
Notary Public, Jefferson Co., Ky.

Commission expires Jan. 14th, 1900.

*Affidavit of E. S. Gaylord. Filed by Defendants.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the  
Eastern District of Tennessee.

UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF INDIANA, }  
County of Marion. }

Personally appeared before me, the undersigned, a notary public, in and for the county and State aforesaid, E. S. Gaylord, who, being duly sworn, deposes and says as follows:

I am a citizen of Indiana, and I am treasurer of the Howe Pump & Engine Company. In October, 1895, our company had a contract for the construction of water works at Rushville, Indiana, and we asked for bids on the cast-iron pipe necessary for the construction of those water works. Approximately, 1,300 tons of pipe were needed. We asked for proposals for the furnishing of said  
267 pipe, and received bids from the Addyston Pipe & Steel Company, R. D. Wood & Company and other pipe manufacturers. In May, 1896, we had a contract for the construction of water works at Sullivan, Indiana, in which approximately 500 tons of pipe were required. We asked for proposals for the furnishing of this pipe and received bids from the Addyston Pipe & Steel Company, M. J. Drummond and other pipe manufacturers.

Affiant further says that there was active competition among these pipe foundries to obtain these orders, but that the Addyston Pipe & Steel Company was the most favorable bidder and obtained both contracts.

Affiant further says that on account of his position as treasurer he was familiar with the current prices of cast-iron pipe, and knew the market value thereof; that the contract prices with the Addyston Pipe & Steel Company were reasonable and satisfactory to the Howe Pump and Engine Company, and that there has been no objection raised thereto.

(Signed)

EDW. S. GAYLORD.

Sworn to and subscribed before me, on this 4th day of Jan'y, 1897.

MARTIN B. HALL,  
Notary Public. [SEAL.]

*Affidavit of J. K. Dimmick. Filed by Defendants.*

(Endorsed :) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division  
of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

Affidavit of J. K. Dimmick, vice-president and general manager of  
the Anniston Pipe & Foundry Company of Anniston, Alabama.

STATE OF ALABAMA, }  
Calhoun County. }

Before me, F. A. Stine, a notary public, in and for said county in  
said State, personally appeared J. K. Dimmick, who is known to  
me, who, being duly sworn, doth depose and say as follows :  
268 That he is a resident citizen of Calhoun county, Alabama,  
residing in the city of Anniston ; that he is the vice-president  
and general manager of the Anniston Pipe & Foundry Company,  
a corporation under the laws of Alabama, whose principal place of  
business and works are at or near the city of Anniston, in said State  
and county ; that said company is engaged in the manufacture and  
sale of cast-iron water and gas pipe, specials, fittings, etc. ; that  
since the organization of said company, on, to wit, the 16th day of  
December, 1893, during all which time affiant has been vice-presi-  
dent and general manager, said company has been actively engaged  
in its said business, and has manufactured many tons of its product,  
selling and shipping the same to different points throughout the  
United States ; that the market it has sought for the sale of its pro-  
ducts has not been confined to any district or territory, but has ex-  
tended throughout the entire United States ; that it has competed  
everywhere that it was practical to do so, taking into consideration  
its capacity, location, orders on hand and the general business con-  
ditions existing at the particular time ; that during the entire period  
of the existence of said company it has at all times met with active  
and energetic competition in the prosecution of its business, some-  
times securing orders, at other times failing, just as in any other  
business in which active competition is met with in the channels of  
trade. It has (as the books of the company will show) expended  
large sums of money in traveling salesmen and other agents and  
employés engaged in seeking to reach prospective customers, solic-  
iting orders, making bids, quoting prices and otherwise endeavoring  
to obtain purchasers for the company's product against competitors.  
The attached exhibit, marked "Exhibit A," is a correct list with  
capacity and location of the pipe manufacturing plants that have  
been actively engaged in the manufacture and sale of such product  
during the period stated. This exhibit, together with a map of the

United States and statistics showing the annual consumption of such pipe, shows that the location and capacity of the various pipe plants of the United States, aside from the competition of the Addyston Pipe & Steel Company, Dennis Long & Company, Chattanooga Foundry & pipe works, South Pittsburg pipe works, Howard-Harrison Iron Company, makes competition in the pipe market a very potent and serious factor to the Anniston Pipe & Foundry Company with respect to prices of pipe.

269 Affiant has himself had long experience in the pipe business extending over a period of thirty years and more last preceding, and has a practical, as well as a mechanical and office knowledge, from personal experience, of every branch of the business in its various stages from the construction of the plant and apparatus, purchase of material for mixtures and manufacture, to the sale, distribution of profits and reckoning of losses, and has become familiar with the capital experiences and labor required, the risks waste, expense and all incidents to the cost of production, marketing and sale; and that he knows and has long be familiar with the pipe market. That unhealthy and ruinous competition often exists to the great loss of the investor and stockholder, and serious damage to the plant affected. That the pipe business has not at any time since December, 1894, been a round of unreasonable, or even reasonable profits to the manufacturer who has not been alive and active in the prosecution of his business, exerting himself to reduce the cost of production and active in putting his goods upon the market, and able to meet energetic competition at every point on every sale.

Affiant further says that since the organization of said Anniston Pipe and Foundry Company, it has owned and controlled in its own corporate rights, all of its product and other property, and has managed and controlled its own business, and not the business of any other individual, partnership or corporation; and that no other individual, partnership or corporation owned, controlled or managed any of its product, other property or business affairs. That of all the pipe said company has manufactured and sold since its organization as aforesaid, not one complaint has been made to it from any customer, alleging the prices paid to be unreasonable or unfair, until one James McClure, of Chattanooga, Tenn., made pernicious charges, for some reason, against the said company and other pipe companies.

That considering the different standpoints of buyer and seller, the customers of the Anniston Pipe & Foundry Company have been uniformly satisfied as to both product and price.

(Signed)

J. K. DIMMICK.

Sworn to and subscribed before me this 22d day of January, A. D. 1897.

[SEAL.]

F. A. STONE,  
N. P., Calhoun Co., Ala.



THE UNITED STATES.

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EXHIBIT "A."

*Cast-iron Pipe Companies in the United States.*

Name of company.	Location of fdt.	Est. output per annum.
Addyston Pipe & Fdy. Co.....	Addyston, O. ....	45,000 tons.
	Newport, Ky. ....	
Anniston Pipe & Fdy. Co.....	Anniston, Ala. ....	30,000 "
Buffalo Cast Iron Pipe Co.....	Buffalo, N. Y. ....	20,000 "
Chattanooga fdy. & pipe works.....	Chattanooga, Tenn. ....	40,000 "
	Bridgeport, Ala. ....	
Colorado Iron & Fuel Co. ....	Pueblo, Colo. ....	15,000 "
Donaldson Iron Co.....	Emaus, Pa. ....	25,000 "
Dennis Long & Co.....	Louisville, Ky. ....	45,000 "
Glamorgan Pipe & Fdy. Co.....	Lynchburg, Va. ....	16,000 "
Howard Harrison Iron Co.....	Bessemer, Ala. ....	45,000 "
Jim Hogg Pipe Fdy. Co. or Texas penitentiary shop.....	Rusk, Tex. ....	23,000 "
Jackson & Woodfin Mfg. Co.....	Berwick, Pa. ....	12,000 "
Lake Shore Pipe Fdy. Co.....	Cleveland, O. ....	60,000 "
Reading Fdy. Co.....	Reading, Pa. ....	25,000 "
McNeil Pipe & Fdy. Co.....	Burlington, N. J. ....	60,000 "
National fdy. & pipe works.....	Scottdale, Pa. ....	25,000 "
Ohio Pipe Co.....	Columbus, O. ....	30,000 "
Oregon Iron & Steel Co.....	Portland, Ore. ....	7,500 "
Radford Pipe & Fdy. Co.....	Radford, Va. ....	25,000 "
South Pittsburg pipe works.....	South Pittsburg, Tenn. ....	15,000 "
Utica Pipe Fdy. Co.....	Utica, N. Y. ....	15,000 "
Warren Fdy. & Machine Co.....	Phillipsburg, N. J. ....	75,000 "
	Easton, Pa. ....	
R. D. Wood & Co.....	Millville, N. J. ....	
	Camden, N. J. ....	
	Florence, N. J. ....	75,000 "
Jas. B. Clow & Sons.....	New Comerstown, O. ....	8,000 "
Peninsular car fdy.....	Detroit, Mich. ....	15,000 "
Shickle Harrison Howard I. Co.....	St. Louis, Mo. ....	12,000 "
		763,500 tons.

*Affidavit of John A. Moody. Filed by Defendants.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the  
Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF ILLINOIS, {  
County of Cook. }

Before the undersigned, a notary public in and for the  
271 State and county aforesaid, personally appeared John A.  
Moody, who being duly sworn deposed as follows:

I am a citizen of Chicago. I am now and have been for four years  
the deputy commissioner of public works of the city of Chicago.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28, 1894, in operation in this country according to my knowledge are as follows:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.  
 Howard-Harrison Iron Co., Bessemer, Ala.  
 Anniston Pipe & Foundry Co., Anniston, Ala.  
 South Pittsburg pipe works, South Pittsburg, Tenn.  
 Chattanooga foundry & pipe works, Chattanooga, Tenn.  
 Dennis Long & Co., Louisville, Ky.  
 Addyston Pipe & Steel Co., Cincinnati, O.  
 Colorado Coal, Iron & Fuel Co., Pueblo, Colo.  
 Oregon Iron & Steel Co., Oswego, Ore.  
 Michigan Peninsular Car Mfg. Co., Detroit, Mich.  
 Ohio Pipe Co., Columbus, O.  
 Lake Shore foundry, Cleveland, O.  
 J. B. Clow & Sons, Chicago, Ills., whose foundry was first located at New Philadelphia, Ohio, and is now located at New Comerstown, Ohio.

Glamorgan Foundry & Pipe Company, Lynchburg, Va.

National foundry & pipe works, Scottdale, Pa.

R. D. Wood & Company, Philadelphia, Pa.

The McNeal Pipe & Foundry Company, Burlington, N. J.

Warren Foundry & Machine Co., Phillipsburg, N. J.

Reading Iron Company, Reading, Pa.

Buffalo Cast Iron Pipe Co., Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

Since December 28, 1894, the city of Chicago, has purchased 10,000 tons of cast-iron water pipe, all of which has been purchased at prices which I consider fair and reasonable, and which were satisfactory to the city of Chicago.

These purchases of cast-iron pipe were made from Chattanooga foundry & pipe works, Addyston Pipe & Steel Co., Dennis Long & Co., and R. D. Wood & Co.

In connection with the purchase of cast-iron pipe for the city of Chicago, I have considered it my duty to keep posted in a general way of the condition of the pig-iron market from time to time.

272 I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

JOHN A. MOODY.

Subscribed and sworn to before me by John A. Moody this ninth day of January, 1897.

[SEAL.]

JAMES J. GRAHAM,  
*Notary Public.*

*Affidavit of M. N. Woodruff. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF ILLINOIS, }  
County of Sangamon. }

Before the undersigned, a notary public, in and for the State and county aforesaid, personally appeared M. N. Woodruff, who, being duly sworn, deposed as follows:

I am a citizen of Springfield, Illinois. I am now, and have been for nearly two years, the mayor of the city of Springfield, Illinois.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28th, 1894, in operation in this country, according to my knowledge, are as follows:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.  
Howard-Harrison Iron Company, Bessemer, Ala.  
South Pittsburg pipe works, South Pittsburg, Tenn.  
Chattanooga foundry and pipe works, Chattanooga, Tenn.  
Dennis Long & Co., Louisville, Ky.  
Addyston Pipe & Steel Co., Cincinnati, Ohio.  
Colorado Coal, Iron & Fuel Co., Pueblo, Colo.  
Oregon Iron & Steel Co., Oswego, Ore.

Michigan Peninsular Car Mfg. Co., Detroit, Mich.

273 Ohio Pipe Company, Columbus, Ohio.

Lake Shore foundry, Cleveland, Ohio.

J. B. Clow & Sons, Chicago, Illinois, whose foundry was first located at New Philadelphia, Ohio, and is now located at New Comerstown, Ohio.

Glamorgan Pipe & Foundry Company, Lynchburg, Va.

National Pipe & Foundry Co., Scottdale, Pa.

R. D. Wood & Company, Philadelphia, Pa.

The McNeal Pipe & Foundry Company, Burlington, N. J.

Warren Foundry & Machine Company, Phillipsburg, N. J.

Reading Iron Co., Reading, Pa.

Buffalo Cast Iron Pipe Company, Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

Since December 28th, 1894, Dennis Long & Company of Louisville, Kentucky, has furnished the city of Springfield 812 tons of cast-iron water pipe and special castings, all of which has been furnished at prices which I consider fair and reasonable, and which were satisfactory to the city of Springfield.

In connection with the purchases of cast-iron pipe for the city of Springfield, I have considered it my duty to keep posted in a general way as to the condition of the pig-iron market from time to time. I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and I consider myself competent and qualified to decide whether or not the prices charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

M. N. WOODRUFF.

Subscribed and sworn to before me by M. N. Woodruff, this second day of January, 1897.

[SEAL.]

E. L. CHAPIN,  
Notary Public.

I further certify that under the laws of my State I have the power to administer oaths.

[SEAL.]

E. L. CHAPIN,  
Notary Public.

274 *Affidavit of Nesbitt Wingfield. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

STATE OF GEORGIA, }  
Fulton County. }

Personally appeared before me, the undersigned notary public, for the State and county aforesaid, — — —, who, being sworn, deposed as follows:

That he was a member of the firm of J. N. Hazlehurst & Co. He states that he had, since December 28th, 1894, bought about twelve hundred (1,200) tons of cast-iron pipe; that he received bids from the Chattanooga foundry & pipe works, and other manufacturers of pipe; that said pipe was to be delivered at New Orleans, and was subject to certain specifications, and that any pipe not conforming to specifications referred to was subject to rejection. In all cases, pipe was to be delivered at New Orleans and any broken or rejected pipe was to be replaced by said Chattanooga foundry & pipe works. That the price charged him by said Chattanooga foundry & pipe works was, to the best of his knowledge and belief and according to his information, fair and reasonable, and afforded no more than a reasonable profit in doing such work.

(Signature)

NISBETT WINGFIELD.

Sworn and subscribed to before me, this 12th day of January, 1897.

[SEAL.]

J. C. DAYTON,  
Notary Public, Fulton Co., Ga.

*Affidavit of J. W. Thomas, Jr. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

UNITED STATES

vs.

ADDYSTON PIPE AND STEEL CO. ET AL. }

STATE OF TENNESSEE, }  
County of Davidson. }

Before me, the undersigned, a notary public, in and for the State and county aforesaid, personally — J. W. Thomas, Jr., who, being duly sworn, deposed as follows :

275 I am a citizen of Nashville, State of Tennessee, and am assistant general manager and purchasing agent of the Nashville, Chattanooga & St. Louis railway, in which capacity it has been my business to purchase for the use of said railway just such cast-iron pipe as was and is now manufactured by these defendants.

The affiant states that during the years 1895 and 1896 he has purchased for the use of his company the following amounts of cast-iron pipe, the quality of said pipe and the price paid for same being satisfactory :

*Purchases from South Pittsburg Pipe Works.*

Date.	Number of tons.	Price per ton.	Amount paid.
Sept. 13.....	1.06	\$18 00	\$19 13
Nov. 19.....	24.35	22 20	540 59
1896.			
Feb. 17....	.09	19 00	17 81
April 22.....	.77	19 00	14 67

*Purchases from the Chattanooga Foundry and Pipe Works.*

Jan. 29...	5.14	18 00	97 38
May 24.....	5.62	18 00	101 29
June 29.....	9.83	19 00	186 86
July 19.....	10-30	20 00	206 05
Aug. 17.....	12.77	20 00	255 55
Sept. 5.....	8.69	20 00	375 40
Sept. 13.....	3.65	20 00	73 05
Sept. 17.....	2.54	20 00	50 95
Oct. 15.....	4.41	20 00	88 30
Sept. 30....	4.43	20 00	88 65
Nov. 6.....	2.53	21 00	53 18
Nov. 18.....	.73	21 00	15 50
Nov. 19.....	23.88	22 00	525 40
Dec. 5.....	4.82	21 00	101 37
Dec. 12....	1.27	21 00	26 67
Dec. 24....	9.29	20 00	185 80
Dec. 27.....	2.31	20 00	46 20
1896.			
Jan. 6.....	7.08	20 00	141 75
Jan. 21.....	6.20	20 00	124 00
Jan. 28.....	3.79	20 00	75 95
Feb. 26....	1.97	20 00	39 45
March 6.....	12.30	20 00	246 05
276 March 9.....	12.99	20 00	259 80
March 9.....	13.22	20 00	264 55
March 12.....	12.80	20 00	256 00
April 15.....	6.61	20 00	132 25
Oct. 31.....	4.78	20 00	95 70
Nov. 1.....	1.71	21 00	36 02
Dec. 9.....	9.37	20 00	187 55

(Signed)

J. W. THOMAS, JR.,  
Purchasing Agent N. C. & St. L. R.



Sworn to and subscribed before me this 22rd day of January, 1897.

CHARLES E. CURRY,  
Notary Public.

[SEAL.]

*Affidavit of Howard Neely. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

STATE OF TENNESSEE, {  
Hamilton County. }

Personally appeared before me, Sam'l Bosworth Smith, a notary public in and for the above State and county, Howard Neely, who, being duly sworn, deposed as follows: That he is a contractor for the construction of water works, sewerage, etc., and that in the prosecution of his business he has purchased large quantities of materials; that he is familiar with the prices of cast-iron pipe, and for the past five years has had occasion to place large orders for that material.

Affiant states that there are a large number of manufacturers engaged in the manufacture of cast-iron pipe, among them being the—

Chattanooga foundry & pipe works,  
Anniston Pipe & Foundry Co.,  
Howard Harrison Iron Co.,  
Dennis Long & Co.,  
Addyston Pipe & Steel Co.,  
Ohio Pipe Co.,  
J. B. Clow & Sons,  
Lake Shore Foundry Co.,  
R. D. Wood & Co.,  
McNeal Pipe & Foundry Co.,  
Glamorgan Co., and others.

277 Affiant further states that he has been present at the majority of the contracts let for the construction of water works, sewers, etc., in the south for the past five years; that he, in most instances, submitted bids for constructing such work, for furnishing of all materials, and in nearly all instances has secured quotations from a number of manufacturers and dealers to furnish such material. He states that he has solicited quotations from manufacturers of cast-iron pipe as follows:

R. D. Wood & Company,  
Chattanooga foundry & pipe works,  
South Pittsburg pipe works,  
Howard Harrison Iron Company,  
Glamorgan Company, and others.

Affiant states that he constructed the water-works system of Troy, Ala., in the year 1895, and that he purchased cast-iron pipe from the Howard Harrison Iron Company of Bessemer, Ala.; that the prices paid them for pipe was reasonable, fair, and was the lowest that were named him by any manufacturer.

Affiant further states that he had prices from others, but that the

Howard Harrison Iron Co. were the only ones who could furnish the pipe in the time required.

Affiant further states that he is posted as to approximate cost of cast-iron pipe, and it is his opinion that quotations named him from time to time have been reasonable and fair, and afforded to the manufacturer no more than a reasonable profit for its manufacture, and that in comparing the prices charged and named by the defendants with that of others engaged in a similar business he has found them as low or lower than others.

Affiant further states that he was the contractor for the construction of a water-works system for the town of Algiers, La., in 1896; that there was used in that town about 1,200 tons of pipe, and that he was posted as to the prices of pipe at that time; that there were a number of bidders to furnish the pipe, among them R. D. Wood & Company and others, and that the prices charged by the Chattanooga foundry & pipe works, who furnished the pipe, were reasonable and fair, and from any information and belief were not such as afforded more than a fair and reasonable profit.

(Signed)

HOWARD NEELY.

Subscribed and sworn to before me this 23rd day of January, 1897.

SAMUEL BOSWORTH SMITH,  
Notary Public.

278 *Affidavit of Charles R. Long. Filed by Defendants.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF KENTUCKY, {  
County of Jefferson. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared Chas. R. Long, who, being duly sworn, deposed as follows:

I am a citizen of Louisville, Ky. I am now and have been for twenty-two years the president of the Louisville Water Company, of Louisville, Kentucky.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now and have been since December 28th, 1894, in operation in this country according to my knowledge are as follows:

Shickle, Harrison & Howard Iron Co., St. Louis, Mo.  
Howard-Harrison Iron Company, Bessemer, Ala.  
Anniston Pipe & Foundry Company, Anniston, Ala.

South Pittsburg pipe works, South Pittsburg, Tenn.  
 Chattanooga foundry & pipe works, Chattanooga, Tenn.  
 Dennis Long & Company, Louisville, Ky.  
 Addyston Pipe & Steel Company, Cincinnati, O.  
 Colorado Coal, Iron & Fuel Company, Pueblo, Colo.  
 Oregon Iron & Steel Company, Oswego, Ore.  
 Michigan Peninsular Car Manufacturing Company, Detroit, Mich.  
 Ohio Pipe Company, Columbus, O.  
 Lake Shore foundry, Cleveland, O.

J. B. Clow & Sons, Chicago, Illinois, whose foundry was first located at New Philadelphia, Ohio, and is now located at New Comers-town, Ohio.

Glamorgan Pipe & Foundry Company, Lynchburg, Va.

National foundry & pipe works, Scottdale, Pa.

R. D. Wood & Company, Philadelphia, Pa.

The McNeal Pipe & Foundry Company, Burlington, N. J.

Warren Foundry & Machine Company, Phillipsburg, N. J.

279 Reading Iron Company, Reading, Pa.

Buffalo Cast Iron Pipe Company, Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

Since December 28th, 1894, the Louisville Water Company purchased from Dennis Long & Company, Louisville, Kentucky, 3,539 tons of cast-iron pipe and special castings, all of which has been purchased at prices which I consider fair and reasonable, and which were satisfactory to the Louisville Water Co.

In connection with the purchases of cast-iron pipe for the Louisville Water Company I have considered it my duty to keep posted as to the condition of the pig-iron market from time to time in a general way; I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

CHAS. R. LONG.

Subscribed and sworn to before me by Charles R. Long this 6th day of January, 1897.

[SEAL.]

W. J. INGRAM,

No. P., J. C.

My commission expires Feb'y 14, 1898.

*Affidavit of T. B. Livingstone. Filed by Defendants.*

(Endorsed:) Filed Jan'y 25, 1897. Henry O. Ewing, clerk.

STATE OF FLORIDA, }  
 County of Duval. }

Personally appeared before me, the undersigned, notary public for the State and county aforesaid, T. B. Livingstone, who, being

duly sworn, deposed as follows: That he is secretary and treasurer of the Citizens' Gas and Electric Company of Jacksonville, Florida. He states that he had since December 28th, 1894, bought about twenty tons of cast-iron pipe; that he received bids from the Chattanooga foundry and pipe works of Chattanooga, Tenn., and from other manufacturers of pipe; that said pipe was to be delivered at Jacksonville, Florida, and was to be subject to the usual specifications, and that any pipe not conforming to said specifications was subject to rejection. In all cases pipe was to be delivered at Jacksonville, Florida, and any broken or rejected pipe was to be replaced by said Chattanooga foundry & pipe works; that the prices charged him by said Chattanooga foundry & pipe works was to the best of his knowledge and belief and according to his information fair and reasonable and afforded no more than a reasonable profit in doing such work.

(Signed)

T. B. LIVINGSTON.

Sworn to and subscribed to before me this 11th day of January, 1897.

[SEAL.]

MAURICE H. SLAGER,  
*Notary Public.*

STATE OF MISSOURI, } ss:  
City of St. Louis,

Alexander Ross, being duly sworn, on his oath says that he is now and has been for the past four years secretary and treasurer and general manager of the Laclede Gas Light Company of the City of St. Louis, Missouri; that said company during the year 1896 made large purchases of cast-iron pipe of the Howard-Harrison Iron Company; that said pipe gave satisfaction, and was purchased by said Laclede Gas Light Company at prices believed to be reasonable.

(Signed)

ALEXANDER ROSS.

Subscribed and sworn to before me this 23rd day of January, 1897.

[SEAL.]

NETTIE MULTON,  
*Notary Public.*

My commission expires April 16, 1899.

*Affidavit of John M. Healy. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL CO. }

STATE OF ILLINOIS, }  
County of Cook, } ss :

Personally appeared before me, the undersigned, a notary public in and for the county and State aforesaid, John M.

Healy, who, being duly sworn, deposes and says as follows :

I am a citizen of Illinois, and a contractor in the business of building and extending water works. During the years 1895 and 1896 I had occasion to make large purchases of cast-iron pipe. I have received prices from the Addyston Pipe & Steel Co. of Cincinnati, Ohio, in competition with the Glamorgan iron works of Lynchburg, Virginia, J. B. Clow & Sons, and others, and all purchases made by me from the Addyston Pipe & Steel Company have been when their price was the lowest in competition with other foundries.

Affiant further says that on account of his position as contractor, he is familiar with the prices of cast-iron pipe, and that the prices received from the Addyston Pipe & Steel Company were reasonable and satisfactory.

JOHN M. HEALY.

Sworn and subscribed before me this 16th day of January, 1897.

[SEAL.]

JOHN T. BAKER,  
Notary Public.

*Affidavit of Geo. O. Knapp. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY ET AL. }

STATE OF ILLINOIS, }  
County of Cook. }

Before the undersigned, a notary public in and for the State and county aforesaid, personally appeared Geo. O. Knapp, who, being duly sworn, deposed as follows :

I am a citizen of Chicago, Cook county, Illinois. I am now and have been for ten years a gas engineer and contractor in Chicago.

The principal manufacturers of cast-iron water and gas pipe and special castings that are now, and have been since December 28th, 1894, in operation in this country according to my knowledge are as follows:

282 Shickle, Harrison & Howard Iron Co., St. Louis, Mo.

Howard-Harrison Iron Company, Bessemer, Ala.

Anniston Pipe & Foundry Company, Anniston, Ala.

South Pittsburg pipe works, South Pittsburg, Tenn.

Chattanooga foundry & pipe works, Chattanooga, Tenn.

Dennis Long & Company, Louisville, Ky.

Addyston Pipe & Steel Company, Cincinnati, O.

Colorado Coal, Iron & Fuel Company, Pueblo, Colo.

Oregon Iron & Steel Company, Oswego, Ore.

Michigan Peninsular Car Manufacturing Company, Detroit, Mich.

Ohio Pipe Company, Columbus, O.

Lake Shore foundry, Cleveland, O.

J. B. Clow & Sons, Chicago, Illinois, whose foundry was first located at New Philadelphia, Ohio, and is now located at New Comers-town, Ohio.

Glamorgan Pipe & Foundry Company, Lynchburg, Va.

National Pipe & Foundry Company, Scottsdale, Pa.

R. D. Wood & Company, Philadelphia, Pa.

Warren Foundry & Machine Company, Burlington, N. J.

Reading Iron Company, Reading, Pa.

Buffalo Cast Iron Pipe Company, Buffalo, N. Y.

Utica Pipe Foundry Company, Utica, N. Y.

Since December 28th, 1894, Dennis Long & Company, of Louisville, Kentucky, has furnished me 16,006 tons of cast-iron gas pipe and special castings, all of which has been furnished at prices which I consider fair and reasonable, and which were satisfactory to me.

In connection with purchases of cast-iron pipe I keep posted in a general way as to the condition of the pig-iron market from time to time. I have a general knowledge of the process of manufacturing cast-iron pipe and of the amount of capital involved in the construction and operation of a cast-iron pipe foundry of average size, and consider myself competent and qualified to decide whether the prices being charged for cast-iron pipe from time to time are fair and reasonable.

(Signed)

GEORGE O. KNAPP.

Subscribed and sworn to before me by Geo. O. Knapp this ninth day of January, 1897.

[SEAL.]

MORGAN E. BALLOU,  
Notary Public.



*Affidavit of A. W. Milligan. Filed by Defendants.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL.

STATE OF NEW YORK, }  
County of New York. }

Personally appeared before me, a notary public in and for the State and county aforesaid, the undersigned, A. W. Milligan, who, being duly sworn, deposed and said as follows:

I am a citizen of the State of New York, in the county and State aforesaid, and the 1st vice-president of the Miller, Sloss & Scott Company, a corporation engaged in the business of the purchase and sale of cast-iron pipe and other commodities, whose principal place of business is at San Francisco, California.

In the prosecution of my company's business I have been for some years past familiar with the market prices at which contracts to furnish cast-iron pipe have been let, and the prices and quotations made. I am familiar with the location of the various pipe manufacturers in the United States, and their facilities for filling orders. Since, and before, December 28, 1894, I have been familiar, in the prosecution of my business, with the various pipe works in operation in the United States, and have known of the quotations of prices, and of their output since that date. The pipe manufacturers are as follows: The Buffalo Cast Iron Pipe Company and the Utica Pipe Foundry Co., of New York; McNeal Pipe & Foundry Co., the Warren Foundry & Machine Co., and R. D. Wood & Co., of New Jersey; the Emaus foundry, Jackson & Woodfin Manufacturing Co., the Mellert Foundry Company (Limited), the Reading Foundry Company, and the National foundry & pipe works, of Pennsylvania; the Glamorgan Co., of Virginia; Dennis Long & Company, of Kentucky; the Chattanooga foundry & pipe works and the South Pittsburgh pipe works, of Tennessee; the Anniston Pipe & Foundry Co., and the Howard-Harrison Iron Co., of Alabama; the Jim Hogg Pipe Foundry Co., of Texas; the Addyston Pipe & Steel Co., Jas.

284 B. Clow & Sons, the Lake Shore Foundry Co., and the Ohio Pipe Company, of Ohio; the Peninsular Car Foundry Co., of Michigan; the Shickle, Harrison and Howard Iron Co., of Missouri; the Oregon Iron & Steel Co., of Oregon, and certain other companies, all of which have been in active operation since said date.

That since December 28, 1894, affiant has contracted with the Anniston Pipe & Foundry Co., of Anniston, Ala., and various other pipe companies, to furnish large amounts of pipe for consumption

on the Pacific slope, and has among other-made purchases and had quotations from the following:

Howard-Harrison Iron Co., Bessemer, Ala.  
 McNeal Pipe & Foundry Co., Burlington, N. J.  
 Warren Foundry & Machine Co., Phillipsburg, N. J.  
 Chattanooga foundry & pipe works, Chattanooga, Tenn.  
 Donaldson Iron Co., Emaus, Pa.  
 Jackson & Woodfin Co., Berwick, Pa.  
 South Pittsburg pipe works, South Pittsburg, Tenn.  
 Dennis Long & Co., Louisville, Ky.  
 Shickle, Harrison & Howard Iron Co., St. Louis, Mo.  
 Radford Pipe & Foundry Co., Radford, Va.  
 Addyston Pipe & Steel Co., Cincinnati, O.

That the prices at which said pipe, and all other pipe, which aggregated large amounts, has been purchased by affiant's company and furnished by the Anniston Pipe & Foundry Co., and others, were the lowest that could be obtained from any of the pipe works in the United States. From my knowledge and long experience, extending over a number of years past, with respect to the cost of manufacturing cast-iron pipe, the loss entailed and the capital required, I consider the prices at which said pipe was purchased, as fair, reasonable and just. From knowledge of such things, I do not believe that the prices could have been less, with a reasonable profit to the manufacturer. The prices at which cast-iron pipe has sold since December, 1894, have been moderate, even low, much lower than pipe could be purchased prior to that time.

(Signed)

A. W. MILLIGAN, 1st V. P.

Sworn to and subscribed before me, at the city of New York, State of New York, on this eighth day of January, 1897.

[SEAL.]

CHAS. H. COLLINS,  
 Notary Public, New York Co.

285 *Affidavit of Jo. C. Guild. Filed by Defendants.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

STATE OF TENNESSEE, }  
 County of Hamilton. }

Personally appeared before me, a notary public of State and county aforesaid, Jo. C. Guild, who, being duly sworn, deposed as follows:

That he is a member of the corporation of Guild & White, contractors, engaged especially in the business of constructing water works for towns and cities in any part of the United States where he can obtain such contracts and has been so engaged for about six years. He states that these contracts are obtained by him from such towns and cities under contracts in each case specifying the mode of construction, capacity, &c., and the kind and capacity to be used. That said contracts are obtained in competition with

other contractors, and that — if necessary for him as such contractor and competitor with other contractors to obtain bids from different pipe works to furnish the pipe for said contracts.

Affiant states that he has since December 28, 1894, bought pipe from the Chattanooga foundry & pipe works, Anniston Pipe & Foundry Co., and South Pittsburg pipe works, amounting to about 500 tons. Affiant further states that he had offers from various pipe works, namely, Chattanooga foundry & pipe works, Anniston Pipe & Foundry Co., R. D. Wood & Co., South Pittsburg pipe works, Glamorgan Pipe & Foundry Co., and others to furnish pipe on aforesaid contracts at prices ranging from \$18.00 to \$26.00 per ton.

In every case of purchase of pipe by the affiant the pipe was to be delivered at the point of consumption, and to be in accordance with the specification of the said city for whom the water works were to be constructed by the affiant and subject to rejection by the said city in case of failure to conform to the said specifications.

He further states that the prices charged him for pipe as aforesaid was to the best of his knowledge on the subject and according to his information, fair and reasonable, and afforded no more than a reasonable profit for doing such work.

Affiant states that from the manner of letting contracts to supply such pipe that there is no market price for the same, but the price in each instance is fixed by special circumstances and special competition under specification-prescribed in each contract.

(Signed)

JO. C. GUILD.

286 Subscribed and sworn to before me, this 4th day of January, 1897.

[SEAL.]

J. M. TRIMBLE,  
Notary Public.

*Affidavit of T. J. Bronson. Filed by Defendants.*

(Endorsed:) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

Before the undersigned, a notary public, in and for the State and county aforesaid, personally appeared T. J. Bronson, who, being duly sworn, deposed as follows:

I am a citizen of Jacksonville, Illinois. I am now, and have been for one year, superintendent of water works of Jacksonville. Since December 28th, 1894, the city of Jacksonville has purchased from the South Pittsburg pipe works, South Pittsburg, Tenn., thirty-three (33) tons of pipe, and from Chattanooga foundry & pipe works, Chattanooga, Tenn., one hundred and forty-seven (147) tons of pipe.

All of which has been purchased at prices which proved to be the lowest that could be obtained, and from affiant's knowledge of the variations of the pig-iron market, the cost of manufacturing pipe, capital required, etc., affiant considers said prices as fair, reasonable and satisfactory, to the city officials of Jacksonville.

(Signed)

T. J. BRONSON.

Subscribed and sworn to before me by T. J. Bronson, this 19th day of January, A. D. 1897.

[SEAL.]

CHARLES G. RUTLEDGE,  
Notary Public in and for Morgan County, Illinois.

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*Affidavit of J. W. Byrnes. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

Chattanooga Foundry & Pipe Works, Chattanooga, Tenn.

GENTLEMEN: Replying to your favor of the 19th inst., we wish to make the following statement:

On the 27th day of May, 1893, we were awarded the contract over other bidders for a new water supply for the city of Galveston. When preparing our bids for this contract your firm made us the lowest price on cast-iron water pipe, the same being \$23.00 per ton of 2,000 lbs. f. o. b., Galveston. This price was also lower than any submitted to the city direct by other bidders. R. D. Wood & Co., of Philadelphia, and other pipe dealers submitted bids at this time.

Deliveries of this pipe commenced in August, 1894, and continued until June, 1895, you delivering us in all about 8,000 tons. We also purchased from you about 650 tons of pipe in addition to the original amount contracted for, which was delivered between March and June, 1895. The price on this pipe was \$23.00 per ton f. o. b. Galveston, and \$23.50 f. o. b. Alta Loma. All the pipe received from you was of a very satisfactory character, and we were satisfied that the price quoted by you was the lowest named by any firm at that time. Our business relations during this entire work were of the pleasantest nature, and we are thoroughly satisfied with the treatment we received at your hands.

(Signed)

J. W. BYRNES.

Sworn to and subscribed before me this 13th day of January, A. D. 1897.

[SEAL.]

J. LOVINBERG,  
Notary Public for Galveston Co., Texas.

288 *Affidavit of David A. Thatcher. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF ILLINOIS, } ss :  
County of Cook, }

Personally appeared before me, the undersigned, a notary public in and for the county and State aforesaid, — — —, who, being duly sworn, deposes and says as follows:

I am a citizen of Illinois, and a contractor in the business of building and extending water works. During the years 1895 and 1896, I had occasion to make large purchases of cast iron-water pipe. I have received prices from the Addyston Pipe & Steel Co., of Cincinnati, Ohio, in competition with the National Pipe & Foundry Company of Scottsdale, Pennsylvania; Ohio Pipe Company of Columbus, Ohio; Lake Shore foundry of Cleveland, Ohio; J. B. Clow & Sons, and others, and all purchases made by me from the Addyston Pipe & Steel Co. have been when their price was the lowest in competition with other foundries.

Affiant further says that on account of his position as contractor, he is familiar with the prices of cast-iron pipe, and that the prices received from the Addyston Pipe & Steel Co. were reasonable and satisfactory.

(Signed)

DAVID A. THATCHER.

Sworn and subscribed before me this 19th day of January, 1897.

GEORGE R. ROCKFELLER,

[SEAL.]

Notary Public, Cook County, Illinois.

289 *Affidavit of C. A. Robbe. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF — —, }  
County of — —. }

Personally appeared before me, the undersigned, (notary public) in and for the State and county aforesaid, C. A. Robbe, who, being duly sworn, deposed as follows:

I am a citizen of Augusta, and a member of the firm of C. A. Robbe, which is located at Augusta, engaged in the business of contracting for the erection of water works.

In the prosecution of his own business he has been for years familiar with the prices at which contracts to furnish pipes have been let, and with a number of pipe manufacturers in the United States.

The affiant has since Dec. 28th, 1894, contracted with South Pittsburgh pipe works, etc., etc., to furnish pipe for the purposes and in the amounts as follows, about three hundred tons of water pipe. The prices at which said pipe were furnished were the lowest that could be obtained from any of the pipe works in the United States, and from affiant's knowledge of the cost of manufacturing pipe, the capital required, etc., affiant considers the prices stated as fair, reasonable and satisfactory.

(Signed)

C. A. ROBBE.

Subscribed to and sworn before me this 15th day of January, 1897.  
[SEAL.] JOHN VAUGHN, J. P.

290 *Affidavit of H. A. Mansfield. Filed by Defendants.*

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF INDIANA, }  
County of Marion, } ss:

Personally appeared before me, the undersigned, a notary public in and for the county and State aforesaid, H. A. Mansfield, who, being duly sworn, deposes and says as follows:

I am a citizen of Indiana and a member of the firm of Mansfield & Allen, contractors, with office at Indianapolis. In July, 1895, our firm closed a contract with the city of Monticello, Indiana. There were some 450 tons of cast-iron pipe needed in the construction of those water works, and I asked for proposals for furnishing said pipe and received bids from the Addyston Pipe & Steel Co., J. B. Clow & Son, and other pipe manufacturers. We accepted the proposal of the Addyston Pipe & Steel Company, as theirs was the lowest bid. They obtained the contract to furnish us with the necessary pipe at their bid of \$22.50 per ton.

Affiant further says that through his connection with the water-works business he became familiar with the current prices of cast-iron pipe and knew the value thereof. That the contract price with the Addyston Pipe & Steel Co. was the lowest price which their firm received on said pipe at the time of contracting. That said price



paid was reasonable and satisfactory to Mansfield & Allen and that there has been no objection raised thereto.  
(Signed)

H. A. MANSFIELD.

Sworn to and subscribed before me this 31st day of December, 1896.  
ANNA M. FNETZSCHE,

Notary Public.

[SEAL.]

291 Affidavit of E. B. Thomasson. Filed by Defendants.

(Endorsed :) Filed January 25, 1897. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

Personally appeared before me, F. H. Bassett, a notary public in and for said State and county, E. B. Thomasson, who, being duly sworn, deposed as follows: That he is contracting agent of the Chattanooga foundry & pipe works, and has acted in such capacity for the past several years. That about January 18, 1895, he visited New Orleans, La., for the purpose of bidding upon contract for cast-iron water pipe to be used in extending the mains of the New Orleans Water Company. That there were quite a number of contractors bidding upon this work to the water company, and among the number was Marion & Co., of New Orleans, that he furnished Marion & Co., with prices on cast-iron pipe, and that when bids were opened by the New Orleans Water Company, Marion & Co.'s bid was about \$8,400.00 lower than all others, and thereupon contract was awarded to Marion & Co.

Affiant was informed at the time that Marion & Co., had stated to the water Co., that they intended using the pipe from the Chattanooga foundry & pipe works, and that the prices he named Marion and others on this pipe were about \$20.00 or \$21.00 delivered — New Orleans, and to be made in accordance with the specifications of the New Orleans Water Co.

Affiant was informed that Marion & Co., had bought and expected to use on this contract a lot of pipe owned by the Radford Pipe & Foundry Co., and held in their yard at Anniston, Ala. This pipe had been made for the Syracuse Water Co., of New York, and had been refused and rejected by their inspector on account of non-conformity with specifications, and for various other reasons. Radford Pipe & Foundry Co., were about and did make an assignment after this, and they had offered this pipe to affiant's company at a very low price, as they were anxious to dispose of all their stock. Affiant protested with the New Orleans Water Co., against allowing this pipe to be used, as in his opinion it did not conform with the specifications or requirements of the New Orleans Water Co. Marion & Co., however, made contract with the Radford Pipe & Foundry Co., to furnish all of the pipe to be used in his, Marion's contract with the New Orleans Water Co.

292 The affiant's company had no correspondence or conversation whatever with the Radford Pipe & Foundry Company

in regard to this business, until some time after, when Armour, the manager of the Radford Pipe & Foundry Co., came to Chattanooga and asked us to furnish a part of the pipe under his contract with Manion, that is for some sizes, I think 20" and 24", that they (the Radford Pipe & Foundry Co.) did not make and did not have in stock.

Affiant's company agreed to furnish this pipe for the Radford Pipe & Foundry Co., but insisted upon having Manion & Co., made responsible to them for the payment of material, which was arranged with the Radford Pipe & Foundry Co., with Manion. Affiant's company shipped this pipe to Manion & Co., and there was no delay whatever made in making such shipments. Correspondence in affiant's company's office shows Manion & Co., in sending delayed remittances to them, explaining cause of delay as being on account of bad weather, etc., and makes no complaint whatever to affiant's company on account of any delay in shipments on their part.

Herewith attaches letter from Manion & Co., of June 20, 1895, Exhibit "A."

Affiant's company some time in the early part of 1895 made a price to one Hungerford, of Conn., for a large lot of pipe to be shipped to South America, and owing to the fact that the railroad rate on pipe to New Orleans and other sea ports intended for export was much lower than the local rates to said points, and the further fact that affiant's company desired to if possible extend their export trade, affiant's company for this reason made a very much lower price on this pipe, than current prices prevailing at that time.

Affiant, however, was informed and believed that this inquiry of Hungerford's was not intended for export, thereupon canceled their quotations to said Hungerford.

(Signed)

E. B. THOMASSON.

Subscribed and sworn to before me this 26th day of January, 1897.

[SEAL.]

F. H. BASSETT,  
Notary Public.

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EXHIBIT "A."

NEW ORLEANS, June 20, 1895.

Chattanooga foundry & pipe works, Chattanooga, Tenn.

GENTLEMEN: Answering your favor of the 19th instant, we have to say, that we made all possible effort to make headway with our contract, but the continued heavy rains daily prevented us from making much progress; however, this has nothing to do with you, we state the fact because we desire your indulgence for a short while. We will in a few days remit you \$5,000.00. We did hope with good weather to be able to draw on the water works Co. and so save our personal funds.

Yours truly,

MANION & CO.

We earnestly request you to send as soon as possible all pipes and specials ordered.

*Certified Copy of Ordinance of City of St. Louis. Filed by Defendants.*

(Endorsed :) Filed Jan. 25, 1897. Henry O. Ewing, clerk.

29954.

(18188.)

An ordinance authorizing the board of public improvements to procure pipes, valves, fire-plugs, and special castings to extend the distribution system of the Saint Louis water works, and making appropriation to pay the cost thereof.

Be it ordained by the municipal assembly of the city of St. Louis, as follows:

SECTION 1. The board of public improvements is hereby authorized and directed to procure cast-iron coated water pipes, valves, fire-plugs, and special castings, to be used in extending the distribution system of the Saint Louis water works.

SEC. 2. The cost of the above materials shall be paid by the city of Saint Louis, and for that purpose there is hereby appropriated and set apart out of water-pipe fund the sum of eighty-five thousand dollars.

294 SEC. 3. There is hereby appropriated and set apart out of water-works revenue to water-pipe fund, the sum of eighty-five thousand dollars.

Approved December 3d, 1895. 8055.

26752.

(18563.)

An ordinance authorizing and directing the board of public improvements to procure materials and lay pump main number eight and appropriating money to pay the cost thereof.

Be it ordained by the municipal assembly of the city of St. Louis, as follows:

SECTION 1. The board of public improvements is hereby authorized and directed to procure the necessary cast-iron coated water pipe, special castings, check-valves and stop-valves, construct and erect all necessary culverts and blow-off drains and lay pump main number eight from high-service pumping station number three, along Broadway to O'Fallon park, thence through O'Fallon park to Algernon street, thence on Algernon street to Warne avenue, thence on Warne avenue to Florissant avenue.

SEC. 2. The cost of the above work and materials shall be paid by the city of St. Louis, and for that purpose, there is hereby appropriated out of water-works extension fund the sum of one hundred and seventy-five thousand dollars.

SEC. 3. There is hereby appropriated and set apart out of water-

works revenue to water-works extension fund the sum of one hundred and seventy-five thousand dollars.

Approved July 3rd, 1896.

26755.

(18566.)

An ordinance authorizing and directing the board of public improvements to procure materials and lay main distribution pipes and appropriating money to pay the cost thereof.

Be it ordained by the municipal assembly of the city of St. Louis, as follows:

SECTION 1. The board of public improvements is hereby authorized and directed to procure cast-iron coated water pipes, special castings, fire-plugs and stop-valves, and lay main distribution pipes on Arsenal street from Macklind Ave. to Woods Ave.; Bacon street from St. Louis avenue to Cass avenue; Cass avenue from Bacon street to Francis street; Carter avenue from Warne avenue to Grand avenue, Chouteau avenue from Compton avenue running north to Compton avenue running south; Compton avenue from Morgan street to Chouteau avenue; Compton avenue from Chouteau avenue to Hickory street; Easton avenue from Francis street to Leonard avenue; Francis street from Cass avenue to Easton avenue to Morgan street; Macklind avenue from Shaw avenue to Arsenal street; Morgan street from Leonard avenue to Compton avenue; Page boulevard from Grand avenue to Easton avenue; St. Louis avenue from Grand avenue to Bacon street; Warne avenue from Florissant avenue to Carter avenue.

SEC. 2. The cost of the above work shall be paid by the city of St. Louis and for that purpose there is hereby set apart and appropriated from water-pipe fund the sum of one hundred and sixty-three thousand dollars.

Approved July 3rd, 1896.

26754.

(18565.)

An ordinance authorizing and directing the board of public improvements to construct a stand-pipe at Compton Hill reservoir and appropriating money to pay the cost thereof.

Be it ordained by the municipal assembly of the city of St. Louis, as follows:

SECTION 1. The board of public improvements is hereby authorized and directed to construct at Compton Hill reservoir a stand-pipe with all necessary valves, special castings, pipes and appurtenances.

SEC. 2. The cost of the above work shall be paid by the city of St. Louis and for that purpose there is hereby appropriated and set apart out of water-works extension fund the sum of one hundred thousand dollars.

SEC. 3. There is hereby set apart and appropriated out of water-works revenue to water-works extension fund the sum of one hundred thousand dollars.

Approved July 3rd, 1896.

I, Henry Besch, register of the city of St. Louis, hereby certify the foregoing to be a true copy of the original, on file in this office, of an ordinance passed by the municipal assembly of the city of St. Louis, entitled "An ordinance authorizing and directing the board of public improvements to procure materials and lay main  
296 distribution pipes, and appropriating money to pay the cost thereof," and numbered 18566.

In testimony whereof, I have hereunto set my hand and affixed the seal of the city of Saint Louis, this 29th day of December, 1896.

[SEAL.]

(Signed)

H'Y BESCH, *Register.*

I, Henry Besch, register of the city of St. Louis, hereby certify the foregoing to be a true copy of the original, on file in this office, of an ordinance passed by the municipal assembly of the city of St. Louis, "entitled" An ordinance authorizing the board of public improvements to procure pipes, valves, fire-plugs, and especial castings to extend the distribution system of the St. Louis water works, and make appropriation to pay the cost thereof, and numbered 18564.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the city of St. Louis, this 29th day of December, 1896.

[SEAL.]

H'Y BESCH, *Register.*

I, Henry Besch, register of the city of St. Louis, hereby certify the foregoing to be a true copy of the original, on file in this office, of an ordinance passed by the municipal assembly of the city of Saint Louis, "entitled" An ordinance authorizing the board of public improvements to procure pipes, valves, fire-plugs and special castings to extend the distribution system of the Saint Louis water works, and making appropriation to pay the cost thereof, and numbered 18188.

In testimony whereof, I have hereunto set my hand and affixed the seal of the city of Saint Louis, this 29th day of December, 1896.

[SEAL.]

(Signed)

H'Y BESCH, *Register.*

I, Henry Besch, register of the city of St. Louis, hereby certify the foregoing to be a true copy of the original on file in this office, of an ordinance passed by the municipal assembly of the city of Saint Louis, "entitled" An ordinance authorizing and directing the board of public improvements to procure materials and lay pumps, main number eight, and appropriating money to pay the cost thereof, and numbered 18563.

In testimony whereof, I have hereunto set my hand and affixed the seal of the city of Saint Louis, this 29th day of December, 1896.

[SEAL.]

H'Y BESCH, *Register.*

297 *Copy of St. Louis Contract. Filed by Defendants.*

(Endorsed :) Filed Jan. 25, 1897. Henry O. Ewing, clerk.

FEBRUARY 18TH, 1896.

The Howard-Harrison Iron Company, F. B. Nichols, vice-president,  
Bessemer, Ala.

DEAR SIR: Under your contract No. 4087, with the city of St. Louis, for making water pipe, you will make the following, viz:

3-inch pipe, 250 pieces.

4-inch pipe, 500 pieces.

6-inch A pipe, 5,500 pieces.

6-inch B pipe, 1,400 pieces.

8-inch A pipe, 50 pieces.

12-inch A pipe, 2,300 pieces.

You will please deliver them in the following order:

6-inch B pipe, 1,400 pieces.

12-inch A pipe, 1,000 pieces.

6-inch A pipe, 5,500 pieces.

12-inch A pipe, 1,300 pieces.

3 inch B pipe, 250 pieces.

4-inch B pipe, 500 pieces.

8-inch A pipe, 50 pieces.

Truly,

BEN. A. ADKINS,  
1st Ass't Engineer.

FEBRUARY 18TH, 1896.

Howard-Harrison Iron Company, Bessemer, Ala.

GENTLEMEN: Your contract No. 4087 with the city of St. Louis, for making water pipe, having been approved, you will proceed at once with the work.

Yours truly,

M. S. HOLMAN,  
Water Commissioner.

Contract and specifications for furnishing and delivering at the city pipe yard about 2,865 tons of cast-iron coated water pipe.

298

*Letting No. 4710.*

A. Agreement, made and entered into this eighth day of February, 1896, by and between the Howard-Harrison Iron Company of Bessemer, Alabama, party of the first part, and the city of St. Louis, party of the second part, witnesseth:

Whereas, the board of public improvements of the said city of St. Louis, under the provisions of ordinance No. 18188, approved Dec. 3rd, 1895, and by virtue of authority vested in said board by the charter and general ordinances of the city, did let unto the said Howard-Harrison Iron Co., the furnishing and delivering of about 2,865 tons of cast-iron coated water pipe.



The above quantity is to be considered as approximate only, and may be increased or decreased as may be required by the water commissioner.

B. Now, therefore, in consideration of the payments and covenants hereinafter mentioned to be made and performed by said second party, the said Howard-Harrison Iron Co., hereby covenants and agrees, and under the penalty expressed in a bond bearing even date with these presents, and hereunto affixed, at its own proper cost and expense, to furnish and deliver the water pipe called for by this agreement, in the manner and under the conditions hereinafter specified; and it is further agreed that the water commissioner of the city of St. Louis shall appoint such assistants and inspectors under him as may be required to inspect the materials to be furnished and the work to be done under this agreement, and to see that the same strictly correspond with the specifications hereinafter set forth.

C. Wherever the words "water commissioner" are used herein, it shall be understood to refer to the water commissioner of the city of St. Louis, and to his properly authorized agents, limited by the particular duties entrusted to them; and wherever the word "contractor" is used herein, it shall be understood to refer to the party or parties who have entered into the contract to perform the work to be done under this contract and specification, or the legal representative of such party.

D. The said party of the first part hereby agrees that all the work contemplated, and described in this contract and specification, shall be done in accordance with the general scale and detail drawings on file in the office of the water commissioner (all of which, together with the specifications, form a part of this contract), and to the satisfaction of the water commissioner; and all materials and workmanship, of whatever description shall be  
299 subject to the inspection and rejection of said water commissioner.

E. And it is further agreed that any unfaithful or imperfect work or materials that may be discovered before the final acceptance of the water pipes shall be corrected immediately on the requirement of the water commissioner, notwithstanding that it may have been overlooked by the proper inspector and estimated. The inspection of the work shall not relieve the contractor of any of his obligations to perform sound and reliable work, as herein described.

F. And the said party of the first part further agrees that if any discrepancy appear between any of the drawings and these specifications, or between any of the several drawings in themselves, such discrepancy shall be interpreted and adjusted by the water commissioner, and that any doubts as to the meaning of these specifications, or any obscurity in the wording of them, shall be explained by the water commissioner, who shall have the right of correcting any errors or omissions in them, when such correction is necessary for the proper fulfillment of their intention; the action of such correction to date from the time that the water commissioner gives due notice thereof.

G. It is hereby agreed that the work embraced in this contract shall be begun within one week after written notice so to do shall have been given by the water commissioner, and carried on regularly thereafter (unless the said commissioner shall otherwise in writing specially direct) with such force as to secure its full completion within three (3) months thereafter, the time of beginning, rate of progress, and time of completion, being essential conditions of this contract.

And the party of the first part further agrees that if the work embraced in this contract is not completed on or before the time above specified, then there shall be retained by said second party, as ascertained and liquidated damages, the sum of twenty-five dollars (25) per day, for every day thereafter that said work is unfinished and contract unfulfilled.

And it is further agreed that the party of the first part shall not be entitled to any claim for any hindrance or delay, from any cause whatever, in the progress of the work or any portion thereof, but such hindrance or delay may entitle said first party to an extension of the time for the completing this contract sufficient to compensate for the detention, the same to be determined by the water commissioner, provided he shall have immediate notice in writing of the cause of detention.

H. The said party of the first part hereby agrees to save and keep the city of St. Louis free and harmless from the payment of any and all damages, costs, expenses, royalties, patent fees, lawyers' fees, or sum or sums of money whatsoever, by reason of any actions, claims, demands or proceedings arising out of any infringement, or alleged infringement, or use of any patent or patented device, article, system, or arrangement, that may be used by said first party in the execution of this contract and specification.

### St. Louis water works.

#### *Specifications for Cast-iron Coated Water Pipes.*

(1.) All pipe shall be delivered at city pipe yard, St. Louis, Mo., where they shall be stored in neat and uniform piles, assorted by sizes, and so as to be easily accessible for hauling. All piles to rest on skids so as to be clear of the ground. In loading pipe on cars for shipment, special care must be taken to prevent the pipe from rubbing or jamming in transit. Any car of pipe arriving in bad condition will be rejected.

(2.) Every pipe shall have distinctly cast upon it the initials of the maker's name, the class letter, also the year in which it is cast, and the number signifying the order in point of time of its casting, the year above and the number below, thus:

1894.	1894.	1894.	1894.	
1	2	3	4	etc.

(3.) The figures and letters shall be from 1 to 2 inches long, and shall have at least  $\frac{1}{8}$ -inch relief.

THE UNITED STATES.

(4.) The exact weight and number of each pipe shall be conspicuously painted in white, on outside or inside, before delivery.

(5.) The pipe shall be made with bell and spigot joints which shall accurately conform, in shape and dimensions, to the drawings furnished.

(6.) They shall be perfectly straight, and true circles in section, with inner and outer surface concentric.

(7.) They shall be of the specified dimensions in internal diameter from end to end, and not less than twelve feet in length over all.

(8.) Especial care shall be taken to have the bell of the required size. The bells and spigots will be tested by circular gauges. The

301 than  $\frac{1}{2}$  inch the outside diameter of the pipe barrel, and no pipe will be received which is defective in joint-room from any cause. The joint-room for each class of pipe is shown in the table herewith.

(9.) The metal shall be made without any admixture of cinder iron or other inferior metal, and shall be of such a character as to make a pipe strong, tough and of even grain, that will satisfactorily admit of drilling and cutting.

(10.) Test-bars of the metal 2 inches by 1 inch, when broken transversely, 24 inches between supports and loaded in the center, shall have a breaking load of not less than 1,800 lbs., and shall have a total deflection of not less than  $\frac{3}{16}$  of an inch before breaking. Said bars to be cast as near as possible to the above dimensions without finishing, but correction will be made by the water commissioner for variations in thickness and width, and the corrected result must conform to above requirements.

(11.) Specimen bars of the metal used, of a size and form suitable for testing shall be prepared when required.

(12.) These specimen bars shall be poured from the ladle at any time, either before or after the pipe has been poured, as may be required, and shall present a true specimen of the iron used for making the pipes.

(13.) If any two test-bars cast the same day do not show the required cross breaking, load and deflection, all pipes made from that mixture will be rejected.

(14.) The pipes shall be cast in dry said moulds, in a vertical position.

(15.) To prevent unequal contraction or distortion, the flasks of 48, 42 and 36 inch pipe shall be allowed to remain in position for at least twelve hours after the casting is made, and the upper end shall be so covered as to produce a circulation through the center of the pipes. The flasks of the 30-inch pipes and under, shall be allowed to remain in position a sufficient length of time to prevent unequal contraction.

(16.) The pipes shall be free from sand holes, cold shorts, scabs and defects of every nature; no plugging or filling will be allowed, they shall be thoroughly cleaned and no lumps or rough places shall be left in the barrels or sockets. In all cases after the pipes have been cleaned, they shall be allowed to cool off sufficiently to

permit inspection. In case of neglect or refusal to comply with this requirement, the pipes will not be received.

(17.) The pipes, after having been cleaned and inspected under the direction and to the satisfaction of the water commissioner, shall be carefully coated, inside and out with coal-pitch varnish.

302 (18.) The surfaces must be entirely free from rust, and no pipe shall be coated unless examined and approved by the water commissioner, immediately before the process begins, as to the cleaning and condition of the surfaces. The contractor shall provide a covered tramway from the casting-room to the dipping vat, so that no pipe shall be liable to become wet previous to its being coated.

(19.) The coating shall be applied upon the following conditions:

(a.) The coal-pitch varnish used must be of a character to make a smooth coating, tough and tenacious when cold, and not brittle or with any tendency to scale off.

(b.) Each pipe shall be heated to a temperature of 300 degrees Fahrenheit immediately before it is dipped, and shall possess not less than this temperature at the time it is put into the bath. Each pipe shall remain in the bath sufficient time to produce the required coating.

(c.) The pitch shall be heated to a temperature of 300 degrees Fahrenheit (or less if the water committee shall so order), and shall be maintained at this temperature during the time the pipe is immersed.

(d.) Fresh pitch and linseed oil shall be frequently added to keep the mixture at the proper consistency, and the vessel shall be occasionally emptied and refilled with fresh pitch.

(20.) Any pipe that is to be recoated shall be first thoroughly scraped and cleaned.

(21.) After being dipped, the pipe shall be carefully drained of the surplus pitch, and when dry, subject to the following proof by water pressure: The pressure of this test shall be 500 lbs. per square inch, for 6 and 8 inch pipes; 400 lbs. per square inch for 10 and 12 inch pipes, and 300 lbs. per square inch for all larger pipes; while in the proving press and under the maximum water pressure, the pipes shall be struck with the proving hammer throughout the entire length of the casting.

(22.) After leaving the proving press each pipe shall be slowly and carefully rolled on level iron ways. Any pipe that does not roll uniformly shall be marked and set aside and shall not be accepted until it has been carefully callipered and shown to be of uniform thickness to the satisfaction of the water commissioner.

(23.) All tools, material and men necessary for the proper inspection of the pipes shall be furnished by and at the expense of the contractor.

(a.) The pipe will be weighed for payment after the application of the coal-pitch coating.

303 (24.) The water commissioner shall be at liberty at all times to inspect the materials and workmanship at the foundry. The form, sizes, uniformity and conditions of all pipes herein

referred to, shall be subject to his inspection and approval; and he may reject, without proving, any pipe which is not in conformity with specifications or drawings furnished. He shall have power to prevent the use of any metal, mould or core, which, in his opinion, may not be proper for the purpose for which it is intended.

(a.) The application of coal pitch shall be made to his satisfaction; and the material shall at all times be subject to his examination and rejection.

(25.) The ton used shall be the ton of (2,000 lbs.) two thousand pounds.

(26.) The pipe shall be of the dimensions given, and shall closely average in weight (for pipe 12 feet in length over all) as follows:

Dimensions of cast-iron water pipe, St. Louis water works:

(Then follows drawings and table of figures which cannot be copied.)

I. The said party of the first part hereby further agrees that it will give its personal attention to the fulfillment of this contract, and that it will not sublet the aforesaid work, but will keep the same under its control; and that it will not assign by power of attorney or otherwise, any portion of the said contract; and it is further agreed that if the party of the first part shall assign this contract, or abandon the work to be done under this agreement, or shall neglect or refuse to comply with the instructions of the water commissioner relative thereto, or shall fail in any manner to comply with the specifications or stipulations herein contained, the board of public improvements shall have the right, with the consent of the mayor, to annul and cancel this contract, and to relet the work, or any part thereof, and such annulment shall not entitle the contractor to any claim for damages on account thereof; nor shall it affect the right of the city of St. Louis to recover damages which may arise from such failure.

J. This agreement is entered into subject to the approval or rejection of the council, and subject to the city charter and ordinances in general, and in particular to the following provisions of article VI, section 28, of said charter, to wit:

(a.) The aggregate payments under this contract shall be limited by the appropriations made therefor.

(b.) On ten days' notice the work under this agreement may, without cost or claim against the city, be suspended by the board of public improvements, with the approval of the mayor, for want of means or other substantial cause. Provided, that on the complaint of any citizen or tax-payer, that any public work is being done contrary to contract, or the work or material used is imperfect or different from what was stipulated to be furnished or done, the said board shall examine into the complaint, and may appoint two or more competent commissioners to examine and report on said work, and after such examination, or after considering the report of said commissioners, they shall make such order in the premises as shall be just and reasonable and the public interest seem to demand, and such decisions shall be binding on all parties. The cost of such examination shall be borne by the con-

tractor if such complaint is decided to be well founded, and by the complainant, if found to be groundless.

K. And the said party of the first part hereby agrees to receive the following prices as full compensation for furnishing and delivering complete at the city pipe yard, in such order as the water commissioner may direct, all of the water pipes, also for all expenses incurred by or in consequence of the suspension or discontinuance of said work, as before specified, and for well and faithfully completing and delivering the water pipes and the whole thereof, in the manner and according to the plans and specifications and the requirements of the water commissioner, under them, to wit:

For all 3-in. C. I. C. water pipe, the sum of twenty-four and x-100 dollars (\$24.00) per ton of 2,000 pounds.

For all 4-in. C. I. C. water pipe, the sum of twenty-four and x-100 dollars (\$24.00) per ton of 2,000 pounds.

For all 6-in. C. I. C. water pipe, the sum of twenty-four and x-100 (\$24.00) dollars, per ton of 2,000 pounds.

For all 8-in. C. I. C. water pipe the sum of twenty-four and x-100 dollars (\$24.00) per ton of 2,000 pounds.

For all 12-in. C. I. C. water pipe, the sum of twenty-four and x-100 dollars (\$24.00) per ton of 2,000 pounds.

K $\frac{1}{2}$ . If, under the process of inspection, there shall have been rejected, under the conditions of this contract and specifications, during any forty days continuously of its limitations, thirty-three per cent. of the pipes offered within that time for acceptance, the contract may, at the option of said party of the second part, be declared forfeited, and it shall be forfeited accordingly.

L. All payments under this contract shall be made upon the certificate of the water commissioner, countersigned by the president of the board of public improvements, upon presentation of  
305 which to the auditor, he shall draw his warrant upon the treasurer for the sum so certified to be due, payable out of the funds in the city treasury available for water pipes, under ordinance No. 18188. Said certificate to be made out and given in the following manner: About the first of each month during the progress of the work, the water commissioner shall cause approximate estimates to be made of the total amount of water pipes and of the relative value thereof at the prices hereinbefore named. From the total amounts so found he shall deduct 10 per cent., and all sums previously paid or rightfully retained under this contract, and certify the remainder then due.

Provided, that nothing herein contained shall be construed to affect the right of the city of St. Louis, hereby reserved, to reject the whole or any portion of the work aforesaid, should the said certificate be found or known to be inconsistent with the terms of this agreement or otherwise improperly given.

M. And the said party of the first part hereby further agrees that it shall not be entitled to demand or receive payment for any portion of the aforesaid water pipes except in the manner set forth in this agreement, nor until each and all of the stipulations hereinbefore mentioned are complied with, and the water commissioner



shall have given his certificate to that effect; whereupon the party of the second part will, at the expiration of ten days after such completion and the delivery of such certificate, pay, and it hereby binds itself to pay, the said party of the first part, in cash, the whole amount of money accruing to the said party of the first part under this contract, excepting such sum or sums as may be lawfully retained under any of the provisions of this contract hereinbefore set forth.

N. Ordinance 16514, approved December 22d, 1891, is hereby made part of this contract, and must be observed in all its provisions, namely:

SECTION 1. All contracts hereinafter entered into wherein the city of St. Louis is a party, for the doing of any kind of work or labor for the city of St. Louis, including work on all public buildings, works and enterprises, shall contain the following terms and conditions: (a) That the men, persons or laborers who may be employed in the doing, prosecuting, or accomplishment of such work done by the contractor with the city of St. Louis, or any one under him, or any persons controlling the said men, persons or laborers, shall not be required to work more than eight hours a day. (b) That in case of the violation of such provisions of such contracts, the  
306 mayor shall immediately declare such contracts canceled and forfeited, and the work being done under such contracts shall be relet in the manner provided for the letting of such work, and such contractor shall thereafter be ineligible to bid upon such work under such reletting, and the difference in the cost of doing such work under such contract, so canceled and forfeited, and under such reletting shall be sued for on the bond of such contractor so violating such contract.

For the faithful performance of all and singular the terms and stipulations of this contract, in every particular the said Howard-Harrison Iron Co., party of the first part, as principal, and John W. Harrison and John A. Holmes, as securities, hereby bind themselves and their respective heirs, executors and administrators, unto the said city of St. Louis, in the penal sum of ten thousand and 100 dollars lawful money of the United States conditioned in the event the said Howard-Harrison Iron Co. shall faithfully and properly perform the foregoing contract according to all the terms thereof, and shall as soon as the work contemplated by said contract is completed, pay to the proper parties all amounts due for material and labor used and employed in the performance thereof, then this obligation to be void, otherwise of full force and effect, and the same may be sued on at the instance of any materialman, laboring man or mechanic, for any breach of the condition hereof; provided, that no such suit shall be instituted after the expiration of ninety days from the completion of said contract.

In witness whereof, the said Howard-Harrison Iron Co., party of the first part, as principal, and John W. Harrison and John A. Holmes, as securities, have hereunto set their hands and seals respectively, and the city of St. Louis, party of the second part, acting

by and through the board of public improvements aforesaid, have subscribed these presents the day and year first above written.

HOWARD-HARRISON IRON CO., [SEAL.]  
[SEAL.] By JOHN W. HARRISON, *Pres't.*

Witness:

P. DANIELS.

JOHN W. HARRISON.

[SEAL.]

P. M. ARTHUR,  
*Sec'y pro Tem.*

JOHN A. HOLMES.  
THE CITY OF ST. LOUIS,  
By ROBT E. McMATH,

[SEAL.]

*President Board of Public Improvements.*

Countersigned:

NEA N. UTENGEN, *Comptroller.*

City counselor's office, St. Louis, Feb'y 10th, 1896.

307 The foregoing agreement and bond are in due form according to law.

W. G. MARSHALL,  
*City Counselor.*

MAYOR'S OFFICE, ST. LOUIS, *Feb'y 11, 1896.*

I hereby approve of the securities to the foregoing contract and bond.

C. P. WALBUDGE, *Mayor.*

*Letter of W. C. Marshall. Filed by Defendants.*

(Endorsed:) Filed Jan. 25, 1897. Henry O. Ewing, clerk.

St. Louis, Jan. 18th, 1897.

Mr. F. B. Nichols, vice-president Howard-Harrison Iron Company.

DEAR SIR: I acknowledge receipt of your request for an affidavit from me, stating my knowledge of the matters pending in the United States court for the eastern district of Tennessee, in the case of the United States against your company, so far as said matters relate to transactions had between the city of St. Louis and your company.

I am unwilling to make any affidavit in this matter, but am perfectly willing to give my testimony at any time it may be desired, and sought in the regular legal methods. It will be impossible for me to go to Chattanooga on the 25th inst., for the reason that I have two cases in the Supreme Court of the United States for the city of St. Louis, which are liable to be called about that time, and I expect then to be in Washington, also to be there during the first or latter part of February on similar business. For this reason, I could not obey a subpoena to attend the trial of your case in Chatta-

nooga. I am willing to state to you, however, what I know about the negotiations between J. E. McClure and the city of St. Louis with reference to contracts of your company with our city.

In March, 1896, the mayor of our city, Hon. C. P. Walbridge, received an anonymous letter signed X. Y. Z., stating that the writer was in possession of information that would save the city from \$20,000 to \$50,000, and proposing to furnish the information on condition that the city would pay to him twenty-five per cent. of the recovery. The mayor referred the letter to Hon. Isaac H. Sturgeon, city comptroller, the fiscal officer of the city, and after

consultation with me, the comptroller, in a letter dated 308 March 23rd, 1896, declined to entertain any proposition until he knew with whom he was dealing and was satisfied with the reliability of the information, but stated that any one who could save the city of St. Louis from \$20,000 to \$50,000 "should not be ignored."

Thereafter, on the 5th of May, 1896, the writer of the anonymous communication visited St. Louis, at his own expense, and disclosed his identity to be Mr. J. E. McClure. At a conference between the comptroller, the deputy comptroller, myself and Mr. McClure, held about that date, Mr. McClure, in general terms, gave us an idea, though very vague, of what it was he claimed to have, and wanted us to sign an agreement giving him twenty-five per cent. of the recovery before disclosing the whole of his information. Upon questioning him, I soon ascertained that the information he had had been acquired by him while occupying a confidential relation with the Chattanooga iron works, and consisted of what he represented to be copies of letters written by that company to other companies, and copies of proceedings alleged by him to have taken place at conferences between several companies.

I was so unfavorably impressed with Mr. McClure and his methods that I declined to advise the comptroller to make any arrangements with him. Thereupon, it was suggested that he leave all of his papers with me, and that I would examine the same and see whether I thought the city of St. Louis could sustain an action against your company. He did so, and after quite a while, I had time enough to go over them, with the result that I advised the comptroller not to go into the litigation.

On the 8th of May, 1896, Mr. McClure demanded a return of his original documents, which were forwarded to him on the 9th of May. Up to that time I had not had time to thoroughly examine the question, and the city had taken no action. On the 14th of May, 1896, he forwarded what purported to be copies of the originals, and my action was based on such copies. On the 2nd of September, 1896, Mr. McClure addressed a communication to the comptroller, reviewing his connection with the matter, and desiring to know the conclusion the city had reached. Upon consultation between the city officers, we determined not to involve the city in litigation in this matter. My personal reason for so advising was, that under the charter of the city of St. Louis, all public work is let out to contract by competitive bidding. The board of public im-

309 improvements has power to reject any and all bids. We have competent engineers who keep posted as to market values, and whenever bids do not come within the amount estimated by them for the doing of public work (and all ordinances authorizing such public work are required to contain an estimate of the cost), the board rejects the bids and readvertises. We think that we are perfectly competent to take care of ourselves and to protect the interests of the city and our citizens and tax-payers, and believe that we have effectually done so. No combination of persons can secure contracts for public work from our city at prices higher than our officers think reasonable and just. The contracts wherein Mr. McClure claimed that the city had been defrauded were deemed by us to be reasonable in view of the state of the market, and taking into consideration the difference in freights were lower than we could have obtained the goods from any other manufacturers in the United States. Time and again the city has secured other persons from the East to bid on our work, and each time the result has been that persons living closer to the city than the eastern manufacturers have underbid them. We do not feel that the city has been or can be defrauded by any combinations that may be made between manufacturers, for whenever any such attempts are made the city protects itself by refusing to agree to pay the prices bid, and by continuing to readvertise for bids until the prices come within the estimated cost of the work. For these reasons I was unwilling to precipitate the city into litigation on this subject. Moreover, I was unwilling to go into litigation where I would have to depend upon the testimony of a man who had proven himself false to the trust reposed in him by his former employers. My experience teaches me that such witnesses are unreliable, and juries generally disregard their testimony, if indeed such witnesses do not sell me out before their testimony becomes available.

Under our charter, the board of public improvements has the power to reject any bid coming from any person not deemed by the board to be responsible; and by responsible is meant, under our decision, not only financially responsibility, but ability to perform the contract, and inclination to deal honestly and fairly with the city.

As far as I am advised, the board has never so considered your company, but our dealings with your company have been satisfactory to us.

I understand that the city has at different times paid different amounts for similar work to your company, but my information is that such variations in price have been caused by the state of the market at the time the contracted were entered into.

310 I believe this is as full a statement of our transactions with Mr. McClure as I am able to make, and if I was present at the trial I would not be able to state anything more, or different so far as I am at present advised.

Respectfully,  
(Signed)

W. C. MARSHALL,  
City Counselor.

*Batch of Letters Filed by Defendants.*

(Endorsed :) Filed Jan. 25, 1897. Henry O. Ewing, clerk.

Do you know this?

M. Llewellyn,  
M.

ST. LOUIS, Nov. 7, 1896.

Chattanooga Pipe & Fdy. Co., Chattanooga, Tenn.

GENTLEMEN: Mr. Abbot and myself have both been out of town for some time and on our return this morning I found the enclosed letter on my desk. As we consider ourselves gentlemen, we treat this letter with the contempt it deserves, and send it to you hoping that you may be able to use it against the "low-down" writer.

Yours respectfully,

THE ABBOT-GAMBLE CONTRACT-  
ING CO.  
H. R. GAMBLE.

CHATTANOOGA, TENN., November 21, 1896.

Messrs. Abbot-Gamble Contracting Co., No. 620 Chestnut St., St. Louis, Mo.

GENTLEMEN: Yours of the 17th in answer to mine of October 12th, received. I have noted carefully all you say and your seeming desire to recover the amount in question.

Now, the evidence which I hold (and which is without rebuttal) is too lengthy to undertake to lay before you, but it consists of verbatim copies of their whole "scheme" to fleese their patrons; I have it in their own handwriting and as you know, this alone is self-convicting anywhere.

I wish to state I will have to change my proposition to you wherein I stated the 50 per cent. contingent fee should cover all costs of collection, attorneys' fees, etc., etc. This is not allowable except as to you and me; if the matter went to trial under such an arrangement as I mentioned in mine of October 12th, it would be thrown out on that account alone; an attorney (according to the law) cannot accept business of this character on a contingent fee, consequently I herewith reduce my compensation to 25 per cent. of the amount recovered (which in the end will be equivalent) and would suggest and advise that you at once make out your statement of all pipe and specials purchased from the Chattanooga foundry & pipe works for delivery at New Orleans, La., in the year 1895, giving weights, sizes, number of pieces of each size, price paid, and date, swear to same and send to me, together with a letter addressed to me stating you agree to pay me a contingent fee of 25 per cent. of the amount recovered or saved in consideration of information and evidence sufficient to substantiate the charge, and to be paid when you realize on said claim. I will fill

in the amount of overcharge and will then place in the hands of very able counsel (who will have thoroughly examined the evidence) and if such letter as he may write is satisfactory in your minds as to the merits of the case, then you and the counsel arrange between yourselves the matter of bringing suit at once. As you know that will have to be arranged between yourselves—I cannot do so for you—after all this has been done I will notify you of the exact amount of your claim. Do not mention anything in reference to this business until it is placed in the hands of att’y for collection. I will say this, you cannot lose.

This matter should be attended to at once, you certainly have been the victims of one of the most rigid “combinations” which has ever existed. Awaiting your prompt reply, with information requested, I am,

Yours, &c.,

J. E. MCCLURE,  
General Delivery.

*Copy of Opinion.*

APRIL 29TH, '96.

DEAR SIR: I have investigated the matter about which you have had some correspondence with parties in a western city, in which you undertook to place the city authorities in possession of information that will enable them to save a large sum of money for the city.

From an investigation of the evidence you have, and of the law applicable to the facts, I can say with confidence that you  
312 have the means of doing what you propose. I am prepared to satisfy any lawyer of the correctness of my views.

Yours truly,

(Signed)

E. M. DODSON, Att’y-Law.

This is applicable to your case also.

J. E. McC.

Messrs. Abbot-Gamble Contracting Co., New Orleans, La.

GENTLEMEN: Having been confidential clerk for the Chattanooga foundry & pipe w’ks, four years and as you purchased from said concern in Jan’y, '95, approximately 7 or 800 tons of 4, 6 and 8" cast-iron pipe and specials, paying for same \$21.75 per ton, I thought I would write you.

This pipe was purchased under a “trust or combination” among certain pipe w’ks and on this ac. you are entitled to recover about \$2,000 straight, but if same is collected through the courts will increase threefold.

I have undoubted evidence as copy of opinion enclosed would indicate, and this opinion is from one of the most able att’ys of this city.

Do you desire to recover this amount and will you allow 50 per cent. of the amount recovered, said am’t to pay all costs of collection and to compensate me for evidence sufficient to substantiate the charge, and for other services rendered looking to the collection of said claim?



In the event you desire to recover money in question, please make out itemized statement of all pipe and specials purchased from the Chattanooga people in '95, giving size, weight and date of purchase. Swear to same before a notary public, and send to me, together with the following letter :

" Dated — — , '96.

Richmond, Chambers & Head, att'ys, Chattanooga, Tenn.

GENTLEMEN : We enclose herewith an account against the Chattanooga foundry & pipe w'ks of your city for \$—, which am't was fraudulently and illegally charged. We place this in your hands for collection on a contingent fee of 50 per cent. of am't recovered, said amount to cover all costs of collection, and to be paid to J. E. McClure of your city, when recovered, and the remaining 50 per cent. to be remitted to us.

Please advise us if this is satisfactory to you.

Yours, etc.,

A.-G. CONT'G CO."

313 You are legally and justly entitled to take steps to recover am't in question and in doing so you are simply doing what all others propose doing with whom I have had correspondence. Manion & Co., of New Orleans (with whom I suppose you are acquainted), have already taken steps through me to recover a much larger claim than yours, and will effect settlement this week, or file bill in court. I *sight* Manion & Co., because it is a similar case to yours.

There should be no settlement allowed to exist in this matter on your part, as I assure you there was none on the part of the pipe w'ks when they charged you 21.75 under said collusion, and stood pat on the price.

In the event you decide to recover as outlined above, it is imperative that you work with me only, as nothing but cold facts will avail anything.

Please let me hear from you at once, and if your decision is favorable, send statement and letter as requested and I will fill in am't of overcharge and notify you of the same.

Yours, etc.,

J. E. McCLURE.

*Replication. Filed Jan'y 25th, 1897.*

UNITED STATES  
vs.  
ADDYSTON PIPE & STEEL CO. ET AL. }

In the Circuit Court of the United States, at Chattanooga, Tennessee.

UNITED STATES  
vs.  
THE ADDYSTON PIPE & STEEL CO., DENNIS  
Long & Co., Howard-Harrison Iron Co.,  
Anniston Pipe & Foundry Co., South Pitts-  
burg Pipe Works, Chattanooga Foundry &  
Pipe Works. } In Equity. No. 539.  
Replication.

This repliant, saving and reserving to *himself* all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer  
314 of the said defendants, for replication thereunto, saith, that it doth and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, or denied is true; all which matters and things this repliant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

UNITED STATES,  
By JAMES H. BIBLE, U. S. Att'y.

*Affidavit of M. L. Holman. Filed January 28th, 1897.*

UNITED STATES  
vs.  
ADDYSTON PIPE & STEEL CO. ET AL. }

STATE OF MISSOURI, }  
City of St. Louis. }

Personally appeared before me, the undersigned authority, M. L. Holman, who makes oath that he is the water commissioner for the city of St. Louis, and as such commissioner has supervision and control of the contracts for the purchase of cast-iron pipe and the receipt of the same; that since the 10th day of December, 1896, Howard-Harrison Iron Company of Bessemer, Alabama, have shipped from Bessemer, Alabama, to the city of St. Louis, 1,700

tons of cast-iron pipe; that this shipment is under a contract entered into with the city of St. Louis, of date October 13th, 1896.  
M. L. HOLMAN.

Sworn to and subscribed before me, this 19th day of January, 1897.

[SEAL.]

(Signed)

WALTER B. DRYDEN,

*Notary Public in and for the City of St. Louis.*

My term expires Sept. 21st, 1900.

315 *Petition for Contempt. Filed January 28th, 1897.*

In the Circuit Court of the United States at Chattanooga.

THE UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL WORKS, DENNIS LONG & Co.,  
Howard-Harrison Iron Co., Anniston Pipe & F'dry Co., Pitts-  
burg Pipe Works, and Chattanooga F'dry & Pipe Works.

Petition for contempt.

To the honorable judges of the circuit court of the United States for the southern division of the eastern district of Tennessee:

The United States, petitioner in the above-entitled cause, respectfully shows to the court that on the 10th day of December, 1896, by its attorney general, it presented its petition to the Hon. C. D. Clark, district judge for the eastern district of Tennessee, alleging that the above-named defendants had, on or about the 28th day of December, 1894, entered into a contract or combination in the form of a trust, or otherwise, or conspiracy, in restraint of trade or commerce among the several States in regard to the sale and manufacture of cast-iron pipe; that the purpose of such combination between the defendants was to monopolize the trade in said cast-iron pipe in the 36 States and Territories and force the public to pay an exorbitant and unreasonably high price for the same; that to accomplish the foregoing purpose the defendants agreed that as to all pipe sold by them in the territory covered by their combination there would be no competition between them; that as to certain portions of their territory called reserve cities, each of the defendants was given the exclusive privilege of furnishing all the pipe, and the other defendants, when applied to, were to fraudulently send in higher bids to insure the furnishing of pipe in such reserve cities to the def'ts agreed upon; that the public and the residents of such reserved cities were ignorant of this fraudulent and secret agreement between the def'ts, and believing that they were honest rivals and competitors, had been applying to all of them in good faith when they wanted pipe, and the result of such fraudulent agreement between defendants had resulted in defendants  
316 extorting from their customers large sums of money; that the unlawful agreement under which the defendants were and had

been operating provided for the shipment of pipe into other States and Territories than the States and Territories in which they respectively resided; and that the agreement, especially as to "reserved cities," provided for the shipment of pipe into other States than the States of defendants' residences; that def'ts were then (when this petition was filed), engaged in selling and shipping pipe into such other States and Territories under the unlawful agreement aforesaid; that def'ts charged a bonus of so much per ton on all pipe sold in their Territory, and this bonus was divided between them every two weeks; that the price of pipe sold by them was not fixed in the usual way, but def'ts had an "auction pool," located at Chicago, composed of six persons, one man from each shop of defendants, to whom all inquiries for pipe were referred, who fixed the price in all cases. The petitioner charged that the combination between defendants was in open violation of the act of Congress of July 2d, 1890. The prayer of said petition was, so far as pertinent to this application, in these words: "That under the fiat of your honors an injunction or restraining order be granted enjoining and restraining the defendants, or either of them, from selling and transporting cast-iron pipe into other States than the States in which they resided, under any contract or agreement entered into with citizens of other States, by virtue of the combination, trust or conspiracy now existing between the defendants;" and further, "that all cast-iron pipe sold and transported by defendants after this date, under and in pursuance of the combination, trust or conspiracy, charged in this petition, to any other State than the State in which defendants so selling and transporting said cast-iron pipe resides, be forfeited to your petitioner and seized and confiscated in the manner provided by law."

Petitioner further shows that when its petition was presented as aforesaid, the following restraining order was granted:

"Whereas in the above cause a motion for the issuance of a preliminary writ of injunction has been duly filed, the hearing whereof being fixed for the 19th day of December, 1896, at 10 o'clock in the forenoon in the Federal court room, in the city of Chattanooga, Tennessee; and it having been made to appear that there is danger of irreparable injury being caused to complainant, before the hearing of said application for the writ of injunction, unless the said defendants are, pending such hearing, restrained as herein set forth, therefore complainant's application for such restraining order is granted."

Now, therefore, take notice that you, The Addyston Pipe & Steel Co., and Dennis Long & Co., Howard-Harard-Harrison Iron Company, Anniston Pipe & Foundry, rison Iron Co., Anniston Pipe & Foundry Company, and South Pittsburg Pipe Works, defendants herein, your agents, servants and attorneys, and each of you are hereby especially restrained and enjoined from further maintaining or executing, directly or indirectly the unlawful combination, trust or conspiracy as alleged in the bill, and from doing any acts or things in aid or promotion of said combination, trust and conspiracy, for the particulars of which reference is made to the bill at

large, and from shipping goods under contract from one State to another in furtherance of said trust and combination, until the hearing upon said application for a writ of injunction and the further order of the court in the premises.

Provided, however, that until the hearing of said application any of the def'ts having on hand goods ready for shipment pursuant to any contract, and desiring to ship the same, may do so by first executing bond before the clerk of this court in such sum as will cover the value of said goods to be so shipped, said value to be fixed by the clerk, and said bond conditioned to account for and pay into the registry of this court the value of any such goods so shipped, if it shall be held on the final hearing that such goods were subject to seizure and confiscation by the United States under the terms of the act of Congress under which this suit is brought."

Petitioner would further show to the court that at the time fixed for the hearing, to wit, December 19th, 1896, defendants appeared and asked for further time in which to answer its petition which was granted by the court to Jan'y 25th, 1897, with the agreement of counsel that their answer would be filed on or before the 10th day of January, 1897. An order was put down fixing Jan'y 25th, 1897, as the time for hearing the application for injunction; also continuing the restraining order aforesaid in force until that time. Defendants filed their answer upon the 21st of January, 1897, and application for injunction has been heard by this honorable court. Petitioner charges that def'ts paid not the slightest attention to the restraining order granted in this cause and without making answer to its petition or explaining in any way its charges against them, or consulting the court or anybody else with  
318 reference to said restraining order or giving any bond as they were required to do in the same, if they shipped pipe, continued in the shipment of pipe into other States than the States in which they reside, under contracts with citizens of such other States, and under contracts dated while the unlawful combination was alleged to exist.

Petitioner charges that it is a matter of public notoriety that defendants gave no heed whatever to the restraining order granted in this cause and the newspaper- of the city of Chattanooga since said restraining order was granted, have published the fact of the shipment of large quantities of cast-iron pipe by defendants, or by defendant, Howard-Harrison Iron Co., to the city of St. Louis.

The answer of defendants itself shows a plain violation of the injunction: it admits the shipment and makes no explanation whatever of the conduct of defendants engaged therein, except to say that they had the right to do so, thus deciding the lawsuit for themselves.

Petitioner would show to the court that by reason of the fact that this is a suit by the Government of the United States, and this court was one of the co-ordinate branches of that Government, it felt it to be its duty to the court to call attention to the fact that the restraining order had been violated and that no further duty rested upon it in the way of taking steps to punish for such violation, but

being directed by the court to bring this petition, if it thought the restraining order had been violated, it now presents the same.

Petitioner charges that in the case presented by its petition it was entitled to the restraining order at the time it was granted by the court, that the court had jurisdiction of the parties and of the subject-matter of the suit, and the same was providently granted, but it is advised that whether said restraining order was providently or improvidently granted, make no difference.

Petitioner charges that said shipments of cast-iron pipe herein mentioned by defendants were in wilful disobedience of said restraining order and in contempt of this court; it therefore prays for an attachment for the body of defendants and that they answer hereto.

Petitioner attaches hereto the affidavit of M. L. Holman, and will read the same at the hearing, as well as the petition filed by it, the restraining order and the returns thereon.

This is the first application for attachment in this cause.

JAMES H. BIBLE,  
*U. S. Attorney.*

319 STATE OF TENNESSEE, }  
*Hamilton County.* }

James H. Bible makes oath that the facts stated in the foregoing petition are true to the best of his knowledge, information and belief.

JAMES H. BIBLE.

Sworn to and subscribed before me this 28th day of January, 1897.

HENRY O. EWING, *Clerk.*

STATE OF MISSOURI, }  
*City of St. Louis.* }

Personally appeared before me, the undersigned authority, M. L. Holman, who makes oath that he is the water commissioner for the city of St. Louis, and as such commissioner has supervision and control of the contracts for the purchase of cast-iron pipe and the receipts of the same; that since the 10th day of December, 1896, the Howard-Harrison Iron Company, of Bessemer, Alabama, have shipped from Bessemer, Alabama, to the city of St. Louis, 1,700 tons of cast iron pipe; that this shipment is under a contract entered into with the city of St. Louis, of date October 13, 1896.

M. L. HOLMAN.

Sworn to and subscribed before me this 19th day of January, 1897.

[SEAL.] WALTER B. DRYDEN,  
*Notary Public in and for the City of St. Louis.*

My term expires Sept. 21, 1900.



THE UNITED STATES.

In the Circuit Court of the United States for the Southern Division  
of the Eastern District of Tennessee.

UNITED STATES, ETC.,

vs.

THE ADDYSTON PIPE & STEEL CO. }

No. 539.

The President of the United States of America to the Howard-Harrison Iron Co. and its officers having personal supervision of its business:

You are hereby cited and admonished to be and appear before our circuit court of the United States for and within the southern division of the eastern district of Tennessee on the 29th day of January, 1897, at 2 o'clock in the afternoon to show cause, if any you know or have, why the Hon. C. D. Clark, one of the judges of said court having on the 10th day of December, 1896, issued a certain order restraining you from certain acts and doings therein particularly set out, you should not be attached for contempt of court in that you have disobeyed the said order, such disobedience being particularly set out in a certain petition filed in the cause by the United States through its district attorney.

And it is ordered that the marshal of this district make legal service and due return of this rule on or before the appearance day above noted.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States this 28th day of January, 1897, and in the 121st year of the Independence of the United States of America.

HENRY O. EWING.

(Endorsed:) Filed January 29, 1897. H. O. Ewing, clerk.

Journal "E," page 575, January 29, 1897.

THE UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL CO. ET AL. }

The hearing of the matter of the rule to show cause why they should not be punished for contempt, issued in this cause for defendant Howard-Harrison Iron Co., and its officers having personal supervision of its business, is continued until tomorrow afternoon at 2 o'clock and it is further ordered that a similar rule issue as to each and every of the other defendants in this cause, and their officers having personal supervision of their business, the same to be made returnable on tomorrow afternoon at 2 o'clock.

Journal "E," page 575, January 30, 1897.

THE UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL CO. ET AL. }

321 Upon return of the rule to show cause, heretofore entered as to Howard-Harrison Iron Co., and it appearing that service of same has been acknowledged and counsel having been

heard in its behalf an answer to rule filed, the court finds the said defendant is in contempt of the restraining order issued in this cause, and orders that said defendant pay a fine of \$500 and the cost of this contempt proceeding and thereupon defendant and his sureties, Brown & Spurlock appeared in open court, and confessed judgment in favor of the United States for said \$500 fine and costs for which execution is awarded.

Journal "E," page 576, Jan. 30, 1897.

THE UNITED STATES  
v.  
ADDYSTON PIPE & STEEL CO. ET AL. }

Upon the return of the rule to show cause heretofore entered as to Addyston Pipe & Steel Co., Dennis Long & Co., South Pittsburg Pipe Works, Anniston Pipe & Foundry Co., Chattanooga Foundry & Pipe Works, and it appearing that all of said defendants have acknowledged service thereof, and filed answers and counsel having been heard in their behalf the court finds that said above-named defendants and each of them, are not guilty of contempt of the restraining order issued herein, and they are each and all discharged from the rule.

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

THE UNITED STATES, ETC.,  
vs.  
ADDYSTON PIPE & STEEL CO. ET AL. }

The President of the United States of America to the Addyston Pipe & Steel Co., Dennis Long & Co., Chattanooga Foundry & Pipe Works, the Anniston Pipe & Foundry Co., South Pittsburg Pipe Works, and the officers of each and every of you having personal supervision of your business:

322 You, and each of you are hereby cited and admonished to be and appear before our circuit court of the United States within and for the southern division of the eastern district of Tennessee on the 30th day of January, 1897, at 2 o'clock in the afternoon to show cause, if any you know, or have why the Hon. C. D. Clark, one of the judges of said court having on the 10th day of December, 1896, issued a certain order restraining you from certain acts and doings, therein particularly set out, you should not be attached for contempt of court in that you have disobeyed the said order in the manner and form particularly set out in a certain petition filed in this cause by the United States through its district attorney. And it is ordered that the marshal of this district make legal service and due return of this rule on or before the appearance day above noted.

Witness the Hon. Melville W. Fuller, Chief Justice of the United

States, this 29th day of January, 1897, and in the 121 year of the Independence of the United States of America.

[SEAL.]

HENRY O. EWING, *Clerk.*

Endorsed: Filed Jan. 29, 1897. Henry O. Ewing, clerk.

THE UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL CO. ET AL. }

*The Answer of Howard-Harrison Iron Co. to Petition for Contempt.*

In answer to said petition, F. B. Nichols says:

That at the time the original petition in this case was filed he was at Hot Springs, Arkansas, on account of bad health and blood-poisoning, for a wound received on his nose by accident. He heard that the bill was filed and knew in a general way from the papers what its object was, but did not know, nor as he believes did any of his company know until Jan. 4th, 1897, that a restraining order had been issued.

That before that time a quantity of pipe had been shipped to St. Louis on its contract, and he admits that since that date shipments from time to time have been made on the same contract.

Affiant further states that on receiving said restraining order it was his belief that it did not apply unless there was an illegal contract or agreement, as charged in the bill, and he did not understand it to be charged that any of the agreements set out were illegal, except on account of the bonus which it was charged was added onto the reasonable contract price.

He states that his attorneys also took this view of the order, and it was thought if the shipments were made without reference to any bonus that this would meet the requirements of the order.

He had been informed before this time that there were systematic efforts being made to induce some of the customers of his company to bring suits for damages, and that there were special efforts being made to induce the city of St. Louis to sue this defendant for \$50,000 or more. Since this bill has been filed, McClure has been traveling as he believes with the view of inducing such suits.

Under these circumstances this affiant and his attorneys also were doubtful about the best course to be pursued. This affiant was advised, and he thought himself, that if he gave bond it would be construed as a confession that the shipments covered were under an illegal agreement as charged in the bill, and he states that his company was unwilling to ask any person to become security and did not have the money to make a deposit. At the same time, the city of St. Louis, owing to its necessities, was insisting on a shipment being made and this respondent had so much at stake on account of the bond they had given, which prescribed heavy penalties for the non-fulfillment of the contract. That he was afraid not to make the shipment, and in addition if we had been forced to suspend shipments, it would not only have been at a loss to ourselves, but would

have closed our shops and caused much suffering owing to the season of the year and dependence of our workmen upon their daily wages to sustain themselves and families during the winter.

Affiant therefore concluded that he would make the shipments, but before doing so gave orders to make no payments of bonus to other defendants, and all the other defendants were notified that he would pay no bonuses thereon and that the shipments were made without reference to any agreement with them, legal or illegal, and this was generally agreed to, and the shipments have been also made.

Affiant states that he had no intention of violating the restraining order, and what he did was under such circumstances that he thought he was taking the best course for his company, and at the same time complying with the order. If his conduct is a violation of the order he is ready to make any atonement that may be required and that is within his power.

F. B. NICHOLS.

Subscribed and sworn to before me, this 29th day of January, 1897.

HENRY O. EWING, *Clerk.*

*Affidavit of C. W. Gray, Answer Dennis Long & Co.*

(Endorsed :) Filed Jan. 30th, 1897. Henry O. Ewing, clerk.

In the United States Circuit Court.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

Personally appeared before me, D. L. Grayson, notary public, C. W. Gray, agent of Dennis Long & Co., and made oath that with one small exception his company has made no shipments of pipe on orders taken prior to the filing of petition in this case and since the restraining order was served. Prior to the filing of the bill in this case a William Murphy, of Chicago, had ordered about 15 tons of pipe, which the books of the company show was shipped on the 18th day of December. It came direct to Dennis Long & Co. and was filled directly by affiant's company, without having in any manner paid any bonus or been debited to the affiant's company on the association books. A portion of the order was filled before the filing of the bill, and after the bill was filed affiant's company declined to ship the balance of the order until the other defendants in the case agreed that it might be shipped without the payment of any bonus to any member of the association.

Affiant's company has made no other shipments since the filing of this bill, except some sales were made in the State of Kentucky, and in the city of Louisville, to the water and gas companies, and some sales were made to the L. & N. R. R. and delivered to the L. & N. R. R. in the city of Louisville, at prices agreed on there, and the L. & N. R. R. received and shipped the pipe on its own account, and

for use in the repair of its road, and the shipments were not made by the defendant out of the State of Kentucky, and all the 325 orders, which in the aggregate was very small, was used by the L. & N. R. R. in the State of Kentucky, except about 600 pounds of pipe that went to Erin, Tennessee, and 7 pieces that went to Henry, Tennessee, but these, even, were all delivered to the L. & N. R. R. at Louisville, and on its own account. Affiant's company has had no intention whatever of violating the restraining order granted and issued in this case, and desires to assure the court of its high regard for the court's orders, and would not have made the shipments referred to unless it believed it was clearly entitled to do so under the state of facts aforesaid.

(Signed)

C. W. GRAY.

Sworn to and subscribed before me, this January 30th, 1897.

D. L. GRAYSON,  
Notary Public.

*Answer South Pittsburg Pipe Works. Filed Jan. 30th, 1897. Henry O. Ewing, Clerk.*

In the United States Circuit Court, at Chattanooga.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

Personally appeared before me D. L. Grayson, notary public, C. W. Harrison, vice-president of the South Pittsburg pipe works, and made oath that with one small exception his company has made no shipments of pipe on orders taken prior to the filing of the petition in this case. There was one small order consisting of 12 pieces of 3-inch pipe, weighing about 180 pounds each, and six fittings which the books of the company show were shipped after the bill was filed, to wit: on the 19th day of December, 1896. This order was dated, Vicksburg, Mississippi, December 8th, 1896. It came unsolicited direct to the affiant, and was filled directly by affiant's company, without having been in any manner submitted to the association or included in the business in which the rules of the association applied. No bonus was debited thereon, or is to be paid thereon, and as aforesaid it was no part of the business to which the rules of the association applied.

326 Affiant has made no other shipments except on orders received since the bill was filed, and which have been filled without reference to other members of the association: the prices were fixed by defendant alone, and no bonus has, or will be paid, on these shipments, and the sales and shipments in no manner submitted to the association. The orders came directly to the affiant's company, and were filled by the affiant's company without reference to the other defendants. The amount shipped was small, not over 150 tons. The shipment was made without any intention

to violate the restraining order, and if your honor shall conclude that it is a violation, the affiant and his company stand ready to comply with whatever order may be made in this regard.

C. W. HARRISON.

Sworn and subscribed before me this Jan'y 30th, 1897.

D. L. GRAYSON,

*Notary Public.*

*Answer Addyston Pipe & Foundry Co. Filed Jan. 30, 1897. Henry O. Ewing, Clerk.*

In the United States Circuit Court, at Chattanooga, Tenn.

UNITED STATES

vs.

ADDSYTON PIPE & STEEL COMPANY ET AL. }

Personally appeared before me D. L. Grayson, notary public Louis Miller, and made oath that he is the secretary and treasurer of the Anniston Pipe and Foundry Company, and states that said company was not served with a copy of the restraining order issued in this cause until January 6, 1897, but he says that they were advised some time before that date that a restraining order had been issued, which information was given on a request from them to know of the character thereof.

Affiant further states that at the time of receiving this information in advance of said service, his company was advised by their Chattanooga attorneys that the restraining order would not operate to delay or prevent shipments if they were made with the express understanding that no bonuses were to be paid or charged thereon, and that they were to be entirely independent of any agreement or understanding with the other defendants.

Affiant's company then notified the other defendants that any shipments it might make would be entirely independent of  
327 any agreement with them, and that they would pay no bonuses thereon. It thereupon continued to fill some contracts taken before the bill was filed, and has filled orders since taken, on none of which is any bonus or premium charged or to be paid to the other defendants. Said company expressed its readiness to make the bond when it first inquired for information on the subject, but was advised that the understanding aforesaid would obviate the necessity thereof, and avoid an apparent admission on the part of this company that the shipments were made under an agreement of the illegal character as charged.

Affiant states that all shipments made by his company have been in accordance with said understanding, and no bonuses have been or are to be paid on such shipments, and all new orders have been taken without reference to any agreements. He states that his company and all its officials had the utmost respect for the order issued, and would not have shipped one pound of pipe without giving bond if they had not understood that the agreement as stated met its full



requirements. All orders taken since by defendant company came directly to it, and have never been submitted to the association.

If they have violated said order it has been unintentional and from error of judgment. He absolutely denies that he or any officer of his company have willfully disregarded said order.

(Signed)

LOUIS MILLER.

Sworn to and subscribed before me January 30th, 1897.

D. L. GRAYSON,  
Notary Public.

*Answer Chattanooga Foundry & Pipe Works to Rule.*

(Endorsed :) Filed January 30th, 1897. Crawford T. Johnson, dep. cl'k.

In United States Circuit Court, Chattanooga.

UNITED STATES

vs.

ADDYSTON PIPE & STEEL CO. ET AL. }

WESTERN UNION TELEGRAPH COMPANY, Nov. 11th, 1896.

W. H. Flirt, 307 Pike building, Cincinnati, O.:

328 Bill filed in U. S. court enjoining us. Until our answer is filed, be governed accordingly, and transact no further business for our account until further notice.

(Signed) CHATTA. FOUNDRY & PIPE WORKS.

*The Answer of the Chattanooga Foundry & Pipe Works to Petition for Contempt.*

For answer to said petition M. Lewellyn says:

That at the time the petition in this case was filed the defendant Chattanooga Foundry & Pipe Works had on hand no orders for shipment of pipe in what was called "pay territory." On the 11th day of December, and before the service of the restraining order on it, it received and accepted a small order from Elizabethtown, Kentucky, for eleven tons of pipe, and while this was inside the pay territory, no bonus was ever fixed for this order or shipment, and none expected or intended to be placed thereon, and the order was filled and pipe shipped independent of and without respect to any bonus paid or to be paid, and the price fixed without the knowledge of the other defendants, and the pipe was loaded and shipped early on December 12, 1896. No other shipments have been made by this defendant into pay territory, except a few small orders amounting to thirty tons, received since the bill was filed, shipped to towns near by on orders sent through the mails, and filled without any reference to the articles of association between the defendants, and the defendant did not expect to pay any bonus on this shipment,

nor did the other defendants expect that it would do so, and the same was filled in the ordinary course of its business and without any intention on its part to violate the restraining order of the court. The members of the association had no knowledge or notice of these sales by defendant, and defendant fixed its own price.

Affiant did not believe, nor did his company, that it was violating the restraining order issued by the court in any shipment which it made. When process was served on it it at once wired its agent in Cincinnati, Ohio, and the telegram is hereto attached, and it expected in good faith to comply with the order of the court. It did not understand that the restraining order of the court required the defendant to entirely suspend its business operations, but it was careful from the beginning to comply with the order of the court.

Affiant begs to assure the court of his great respect for the court, and of its desire to comply with the orders of the court.

329 Affiant believed that the restraining order of the court did not apply unless there was an illegal contract or agreement as charged in the bill, and he did not understand it to be charged that any of the agreements set out were illegal except on account of the bonus which it was charged was added onto the reasonable price, and believed that if the sale and shipment was made on its own account—itsself fixing the price—it would be no violation of the order.

If there has been a violation of the restraining order by this defendant it is not intentional or willful, but if after truthfully and frankly stating the facts to the court the court is of the opinion that the defendant's conduct amounts to a violation of the restraining order, the defendant will without complaint submit to whatever order may be made in relation thereto.

Defendant also assures the court that there has been no newspaper publication of shipments by any of the defendants except some pipe shipped to Boston, Mass., by the Howard-Harrison Iron Co., and the defendant believes the court will not condemn it and its codefendants on mere newspaper talk which seems to distress the district attorney.

STATE OF TENNESSEE, }  
Hamilton County. }

Personally appeared before me, M. Lewellyn, and made oath in due form of law that the facts stated in the above answer are true to the best of his knowledge and belief.

(Signed)

M. LEWELLYN.

Sworn to and subscribed to before me, this 30th day of January, 1897.

D. L. GRAYSON,  
Notary Public.

*Answer of Addyston Pipe & Steel Company to Rule. Filed Jan. 30, 1897. Crawford T. Johnson, Dept. Clerk.*

In the United States Circuit Court, Chattanooga.

UNITED STATES  
vs.  
ADDYSTON PIPE & STEEL COMPANY. }

The Addyston Pipe & Steel Company for answer to the contempt proceedings in this case, says:

330 It has in no manner violated the restraining order in this case, and has been all the time careful to comply with this order. At the time the bill in this case was filed it had on hand no unfilled orders. Since the bill was filed it has received and accepted orders, and shipped pipe to a few points in the State of Ohio where its plant is located, and has filled an order for pipe and shipped the same to the State of New York, which is what is called "free" territory. Before the bill was filed defendant had sold to a customer in Indiana a small lot of pipe, to wit; about seventeen pieces, which proved unsatisfactory on account of what is called the depth of the bell, and after the bill was filed this customer desired to exchange this lot of pipe with the defendant for pipe of another pattern, to remedy the aforesaid defect, and defendant did make the exchange, shipping the 17 pieces to the customer, and the customer holds for it the 17 pieces first sold, but it was not a sale, simply an exchange without further consideration, and was made as a matter of accommodation to the customer, he paying the difference in the freight, and defendant did not regard this as a violation of the order. If it had it should not have made the shipment.

STATE OF TENNESSEE, }  
County of Hamilton. }

Personally appeared before me, the undersigned, B. F. Haughton, vice-president of the defendant, and made oath in the form of law that the facts stated in the above answer are true to the best of his knowledge and belief.

(Signed)

B. F. HAUGHTON.

Sworn to and subscribed before me, this 30th day of January, 1897.

D. L. GRAYSON,  
Notary Public.

*Affidavit of Spurlock. Filed by Defendant. Filed January 30, 1897.  
Crawford T. Johnson, Dept. Cl'k.*

UNITED STATES

vs.

ADDYSTON PIPE & STEEL COMPANY. }

331 Personally appeared before me, D. L. Grayson, notary public, Frank Spurlock, and made oath that soon after the petition in this case was filed his firm was employed to represent defendants, and one of the first features of the case considered was the restraining order that had been issued. His interpretation of that order was that it was only meant to restrain shipments or any other acts that were "in furtherance of said trust and combination, until the hearing upon said application for a writ of injunction." The defendants as he then understood the order were enjoined from maintaining in any manner the alleged illegal trust or combination. Affiant therefore considered that if the defendants neither made any shipments or did any other acts in furtherance of the agreement that existed, whether legal or illegal, that the restraining order would be complied with. He therefore advised each of the defendants to withdraw its representative from the agency to which orders were submitted, and to make no more shipments without having it distinctly understood that the orders were filled and the shipments made by each concern independently and without reference to any bonuses, and that no bonus account should be kept. It was affiant's opinion that if they complied with these instructions the defendants could not be acting in furtherance of the agreement as alleged; whether it was legal or illegal.

While affiant was of the opinion that said agreement was not illegal, he felt certain that it was not intended to stop defendants from making shipments of pipe even if the orders had been taken under an agreement that would be held illegal, provided that the actual shipments made were by agreement taken out of that contract and shipped without reference thereto.

Defendants all agreed to pursue the course directed, and he believes they have done so, and that while they have been advised that their arrangement was not illegal, they have not, as he believes, done anything in the furtherance thereof since they were restrained. If wrong in this construction it is purely an error of judgment, and the course advised and pursued was out of deference to the order of the court, and not with the slightest intent to violate it.

Affiant is, however, aware that as an attorney in assuming to advise the course pursued, he assumed the risk of bad judgment, and submits to the court his share of the guilt that there may be full vindication of the punishment of the court.

(Signed)

FRANK SPURLOCK.

Sworn to and subscribed before me this Jan'y 30th, 1897.

D. L. GRAYSON,  
Notary Public.

(Endorsed:) Filed Feb'y 5, 1897. Crawford T. Johnson, deputy clerk.

THE UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL CO. ET AL. }

This suit is brought on behalf of and in the name of the United States against six named corporations. The State of creation and the chief place of business of the several defendants are as follows:

Addyston Pipe & Steel Co., Cincinnati, Ohio.

Dennis Long & Co., Louisville, Ky.

Howard-Harrison Iron Co., Bessemer, Ala.

Anniston Pipe & Foundry Co., Anniston, Ala.

South Pittsburg Pipe Works, South Pittsburg, Tenn.

Chattanooga Pipe & Foundry Works, Chattanooga, Tenn.

The petition charges that the defendants are practically the only manufacturers of cast-iron pipe within the following States and Territories: Alabama, Arizona, California, Colorado, North Dakota, South Dakota, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Indian Territory, North Carolina, South Carolina, New Mexico, Minnesota, Michigan, Tennessee, Texas, Illinois, Wyoming, Indiana, Ohio, Utah, Washington, Oregon, Iowa, West Virginia, Nevada, Oklahoma, and Wisconsin.

It is further charged upon information that the defendants, in order to monopolize the trade in cast-iron pipe in the above-named States and Territories, entered into a contract or association, known as the Associated pipe works; that the purpose of the association was to destroy all competition within said territory, and to force the public to pay unreasonable prices for the cast-iron pipe manufactured and sold by said companies; that for such purpose each company selected a representative, and that these representatives constituted an executive committee. It is charged that the defendant, by terms of said association, agreed not to compete with each other in regard to work done or pipe furnished in the States and Territories above named, and to make effectual the objects of the association, a "bonus" was agreed to be charged upon all work done and pipe furnished within said territory, and the petitioners charge that

333 this "bonus" was put upon the real market price of pipes sold by these companies, and to that extent increased the price to the purchasing public; that the amount of this "bonus" ranged from \$3 to \$9 a ton; that the purpose of the association was thus to force up the price of cast-iron pipe to an exorbitant and unreasonable extent. It does appear from the bill, as well as the answer, and the proof, that upon what may be called "stock goods," regularly sold, there is a fixed "bonus," and that upon goods supplied by special contract the "bonus" is determined as follows: When bids are advertised for by any municipal corporation, water company or gas company, the executive committee determines the price at which

the bid is to be put in by some company in the association, and the question to which company this bid shall go is settled by the highest "bonus" which any one of the companies as among themselves will agree to pay or bid for the order. When the amount is thus settled, the company to whom the right to bid upon the work is assigned, sends in its estimate or bid to the city or company desiring pipe, and the amount thus bid is "protected" by bids from such of the other members of the association as are invited to bid, by the bidding in all instances being slightly above the one put in by the company to whom the contract is to go. There are, within the thirty-six States and Territories, what are called "reserved cities," by which is meant that it is agreed that particular members of the association shall have the work of particular cities, and on this they pay the regular "bonus," just as on stock goods when sold independently of special contract obtained by bidding. It appears, too, that by far the larger amount of work done with goods furnished by these companies is under special contract with municipal corporations, and gas and water companies, as above stated. Practically, all the profitable business is thus done. The general public, so far as affected by the business at all, is affected mainly through municipal corporations. All of the States of the United States outside of the States and Territories above named, are called "free territory," and the States named are distinguished as "pay territory." Settlements are made at stated times of the bonus account debited against each company, where these largely offset each other so that small sums are in fact paid by any company in balancing accounts. The aggregate annual manufacturing capacity of the six companies belonging to this association is 220,000 tons, with a daily capacity or output of about 650 tons. There are nine other companies or corporations engaged in manufacture and sale of cast-iron pipe within the "pay territory," with an aggregate daily capacity of 334 about 835 tons, though most of these are small concerns, and there are ten companies or corporations engaged in the same business located within the "free territory," as above explained, with a daily capacity or output of say 1,550 tons. It appears, also, that members of the Associated pipe works, while they do not compete with each other are subjected to competition by other companies and corporations, both within and without the pay territory, though just to what extent and with what effect this competition is carried on does not clearly appear. It does appear, however, sufficiently that the companies within the association have not so far been able to raise or maintain prices above what is reasonable, compared with the prices at which similar goods and similar work may be obtained from the companies outside of the association. It now appears that all corporations, with one or two unimportant exceptions, which have let contracts to members of this association, are satisfied with the prices, and make affidavit to the fact that they are reasonable, and that the prices furnished are in the main considerably below the estimates made by expert engineers of such companies prior to the advertising for bids, the proof shows, too, that the defendant companies have, at least in certain instances, made quotations on



goods to be delivered in the "free territory" below corresponding prices in the pay territory. It is said by defendants that this is explained by reason of the difference in the cost of goods manufactured under contracts obtained by bidding and stock goods, which are sold on general orders, and consisting of goods which have been rejected as not coming up to specifications, and goods manufactured during the winter season, in order to keep men and machinery from becoming idle, during which period there is practically no demand by companies which purchase goods on special orders, and contracts by bids.

I think it does sufficiently appear that the average prices obtained by this association since its formation are above what was obtained before, though as above stated, the proof is not sufficient to show that the ruling prices are now above what is reasonable as determined in the markets and by competition. The defendants in their answers deny the purpose attributed to the association by the plaintiff's petition. On the contrary, they say and set up that prior to the association they were engaged in reckless and ruinous competition among themselves, as a result of which their business was not prosperous, and under which condition of things it was certain that some or all of them would fail and leave the entire field to such as might be able to survive. It is set up that what is called a

335 "bonus" does not affect the price to the purchaser at all but that the association determines in the first place what the market price should be, having regard also to the competition to which it is likely to be subjected by other companies not in the association, and that the price is not at any time unreasonable, and the "bonus" is merely a mode of determining as between themselves, to an extent, who shall secure the work, but chiefly to make it certain that each company does its fair share of the business by making the "bonus" burdensome to such companies as might undertake to do more than their reasonable share of business within the territory named. It is further said that under the association the business has been fairly divided between the companies and that they have been enabled to keep all of the plants in operation, their operatives at work, and the machinery from becoming idle. I think it could be safely stated that in some instances, prices have been above what was probably fair or reasonable, but the proof fails to show that the average prices have been so. The leading witness for the Government was for some time a stenographer in the service of the defendant, Chattanooga Foundry & Pipe Works, and in that position did the work of the association, became familiar with all of the details by which the business was conducted, and after giving up his position, made known to the Government's law officer, all of the facts of the case, and was persistently and industriously corresponding with persons who have had dealings with members of the association, and has done all in his power to instigate suits by purchasers from these companies against the associated companies, and has offered to become a witness in their interest in such suits, always making a condition that he was to be liberally compensated, exacting generally a very large per cent. of what might be recovered. A

complete exposure of all business details of these companies has been thus made. So far he has not been able to cause any suit to be instituted, but upon the facts laid before him the district attorney, under direction of the attorney general, instituted the present suit. It was certainly eminently proper in view of the disclosures made to the district attorney that suit should be brought, and investigation be had. This suit is based upon the act of July 2nd, 1890: "To protect trade and commerce against all unlawful restraints and monopolies, commonly called the 'anti-trust act'"; 26 Stat., 209, c. 647, Rev. St. Supp., 762.

Such of the provisions of the act as affect the matter now under consideration are as follows:

"SECTION 1. Every contract, combination in the form of  
336 trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor.

SECTION 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor.

SECTION 4. The several circuit courts of the United States are hereby invested with the jurisdiction to prevent and restrain violations of this act."

When the petition was filed, a restraining order was allowed and the case is now heard upon the application for a preliminary injunction. The discussion on this motion has taken a wide range, and was proceeded upon the basis that the entire case has been practically developed as much as could be done upon full preparation and a final hearing. The record so far as made up consists of petition, answer, affidavits and exhibits thereto. A demurrer is incorporated in the answer of the defendants and the defense rests upon two grounds: 1st, that the association is not one subject to the provisions of the act of Congress to enforce which alone this suit is brought, and, 2nd: that the association in its purpose and mode of doing business does not constitute a monopoly and causes no restraint of trade, such as would be unlawful at the common law. It will depend upon the solution of the first question made as to whether it will become necessary to examine the second. The question whether this is an association such as subjects it to the provisions of the act of Congress is one of some difficulty. This act, like what is known as the interstate-commerce act is new and experimental legislation by Congress. The discussion which attended the passage of the act by Congress, as shown by the records, makes it plain that the ablest and most thoughtful jurists of that body experienced much of the same difficulty which has since been felt by the courts in the attempt to enforce the act. It was recognized that Congress was restricted in anything that it might do upon the particular subjects named in the act to a very narrow field; that

the constitutional validity of the legislation was doubtful as a whole. Up to the date of the enactment of the interstate-commerce law, and of the act now under consideration, the interstate-commerce clause of the Constitution under which legislation of this character is justified, has been considered by the courts almost entirely with relation to the State legislation, and its constitutional validity. Nevertheless, it will be profitable to refer briefly to the doctrine announced in some of these cases before making more particular reference to cases in which this act has been considered. It has, of course been recognized from the beginning, that it was no more within the province of Congress to legislate upon domestic commerce, or commerce wholly within the States, than it was within the power of the legislature of a State to legislate upon the subject of interstate commerce or trade. In *Nathan v. Louisiana*, 8 Howard, 73, a tax was imposed upon every money or exchange broker, and this legislation was objected to upon the ground that the sole business of the defendant in that case was the buying and selling of foreign bills of exchange which were instruments of commerce and the act was repugnant to the constitutional power of Congress to regulate commerce with foreign nations and among the several States. It was admitted by the court that foreign bills of exchange were instruments of commerce, but the court also said in effect that the products of agriculture or manufacture were in like manner instruments of commerce. Mr. Justice McLean, giving the opinion of the court, said :

"He is not engaged in commerce, but is supplying an instrument of commerce. He is less connected with it than the ship-builder, without whose labor foreign commerce could not be carried on."

The court further pointed out that domestic bills or promissory notes were as necessary to commerce of a State as foreign bills were to the commerce of the Union. In the case of State freight-tax cases, 82 U. S., 272, the court observed :

"The transportation of articles of trade from one State to another was the prominent idea in the minds of the framers of the Constitution, when to Congress was committed the power to regulate commerce among the several States. A power to prevent embarrassing restrictions by any State was the thing desired."

In *The Railroad Co. v. Richmond*, 19 Wallace, 584, a contract had been entered into between the Dubuque and Sioux City Railroad Co. and the Dubuque Elevator Co., both created corporations by the laws of Iowa, by the terms of which contract, among other things, the elevator company was to erect an elevator on land leased from the railroad company to be situated at Dubuque for the purpose of receiving, storing, delivering and handling all grain that should be received by the cars of the railroad company, not otherwise consigned, and to receive and discharge at Dubuque for the company all through grain, by which was meant grain transported by the terms of shipment to that place to points beyond at a certain stated price per bushel. The railroad company stipulated on its part that it would not erect a similar building for receiving, storing or delivering grain at Dubuque and would not

lease any other the right to erect any such building; that the elevator company should have the exclusive right to handle all through grain at Dubuque at the stipulated price per bushel. The railroad company having leased its road and property to the Illinois Central Railroad Company, the latter company disregarded the contract, and suit was brought in the United States court to enforce the same on behalf of the elevator company, and the defense was that the contract was repugnant to the Constitution as violating the interstate-commerce clause. This defense was overruled, and decree entered in favor of the elevator company, and the case was taken on writ of error to the Supreme Court of the United States. The ruling of the lower court was affirmed and the Supreme Court in doing so enunciated again the controlling rule upon this subject by saying:

"The power to regulate commerce among the several States was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating State legislation; it was never intended that the power should be exercised so as to interfere with private contracts not designed at the time they were made to create impediments to such intercourse."

In *Shirlock v. Awling*, 93 U. S., 100, a statute of the State of Indiana was drawn into question. This statute contained provisions designed for the better security of the lives of the passengers on board vessels propelled in whole or in part by steam and the contention was that as applied to marine torts the act was invalid as interfering with the exclusive regulation of commerce vested in Congress. Mr. Justice Field, discussing this point, and referring to previous decisions, used the following language:

"In supposed support of this position, numerous decisions of this court are cited by counsel to the effect that the States cannot by legislation place burdens upon commerce with foreign nations or among the several States. The decisions go to that extent, and their soundness is not questioned, but upon an examination of the cases in which they were rendered it will be found that the legislation adjudged invalid imposed a tax upon some instrument  
339 or subject of commerce or exacted a license fee from parties engaged in commercial pursuits, or created an impediment to the free navigation of some public waters, or prescribed conditions in accordance with which commerce in particular articles as between particular places was required to be conducted. In all the cases the legislation condemned operated directly upon commerce either by way of tax upon its business, license upon its pursuit in particular channels, or condition for carrying it on. Thus in *Passenger cases*, 7 How., 445, the laws of New York and Massachusetts exacted a tax from the captains of vessels bringing passengers from foreign ports for every passenger landed. In the *Wheeling Bridge case*, 13 *id.*, 518, the statute of Virginia authorized the erection of a bridge which was held to obstruct the free navigation of the River Ohio. In the case of *Sinnot v. Daveuport*, 22 *id.*, 227, the statute of Alabama required the owner of a steamer navigating the waters of the State to file, before the boat left the port at Mobile, in the office

of the probate judge of Mobile county, a statement in writing setting forth the name of the vessel and of the owner or owners, and his or their place of residence and interest in the vessel, and prescribed penalties for neglecting the requirement. It thus imposed conditions for carrying on the coasting trade in the waters of the State in addition to those prescribed by Congress. And in all the other cases where legislation of a State has been held to be null or interfering with the commercial power of Congress as in *Brown v. Maryland*, 12 Wheat., 425; State tonnage-tax cases, 12 Wall., 204, and *Welton v. Missouri*, 91 U. S., 275, the legislation created, in the way of tax, license, or condition, a direct burden upon commerce, or in some way directly interfered with its freedom."

And in further progress of the opinion the court observed :

"In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it, without constituting a regulation of it within the meaning of the Constitution."

It will be readily seen that the cases recognize the distinction between the subjects of commerce and commerce itself, as well as between the instruments and aids to such commerce, and the actual business of commerce. In regard to State legislation 340 it has been declared from the beginning that to render such legislation subject to constitutional objection under the commerce clause the effect of legislation upon the interstate commerce must be direct, and not incidental or indirect. The general statement of law, so generally repeated has been illustrated by the varying facts of many cases, but it would extend this opinion beyond reasonable limits to now refer to these. It has been observed that the line of demarkation between State and Federal jurisdiction and regulation is a delicate one and at times grows dim and shadowy. In considering a question of this delicate nature proper and practical distinctions become extremely important. A particular business must be distinguished from the mere subjects of the business and from the mere incidents to or instruments by which the business is carried on. It is hardly conceivable that any large industrial or manufacturing establishment could be carried on without shipping products from one State to another, and such would certainly be the course of business contemplated. Nevertheless, the business of such an establishment would be related to the interstate commerce only incidentally and indirectly. Commerce would not be the main business nor within the main purpose of the ordinary manufacturing establishment. Interstate commerce would be altogether an incident. There is no direct relation between the two. It is probably true that every wholesale establishment within the limits of the larger cities is engaged in such mode of business as that it is known that the business can be conducted only by the method of the interstate commerce in part. Such commerce is, however, not directly affected, and least of all impeded or restricted. If every



private enterprise which is carried on in part or chiefly by interstate shipments or by a mode of business which makes this necessary, it is to be regarded as thereby so related to interstate commerce as to come within the regulating powers of Congress, it is obvious that this power could at once be extended to almost every form of business in the country, which is conducted on anything like an extensive scale. So liberal an interpretation as this, would of viously, in a large sense, obliterate the lines between the Federal and the State jurisdiction, and as an act of Congress is paramount in authority, would strike down the autonomy of the States. The doctrine applicable to this subject was thoughtfully and fully restated by Mr. Justice Lamar, in *Kidd v. Pearson*, 128 U. S., 20, in language as follows:

341 "No distinction is more popular to the common mind or more clearly expressed in economic and political literature than that between manufacture and commerce. Manufacture is transformation and the fashioning of raw materials into change of form for use. The functions of commerce are different. The buying and selling and transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. \* \* \* If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock-raising, domestic fisheries, mining—in short, every branch of human industry. For, is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat-grower of the Northwest or the cotton-planter of the South, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform and vital interests—interests which in their nature are and must be local in all the details of their successful management. \* \* \* The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement towards the establishment of rules of production in this vast country, with its many different climates and opportunities, could only be at the sacrifice of the peculiar advantages of a large part of the localities in it, if not of every one of them. On the other hand any movement toward the local, detailed and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for, Congress would be confined to the regulation, not of certain branches of industry,



however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen, but still there

would always remain the possibility, and often it would be the case, that the producer contemplated a domestic market.

In that case the supervisory power must be executed by the State, and the interminable trouble would be presented, that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the State governments, and more provocative of conflicts between the General Government and the States, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine.

The distinction before referred to between commerce and the subjects of commerce and between the direct and indirect effect of the business, or mode of doing business, upon interstate commerce, is hereby clearly recognized and declared, as was also done in *United States v. E. C. Knight*, 156 U. S., 1, in which the opinion in *Kidd v. Pearson* is expressly referred to and the ruling reaffirmed. It was easy to anticipate that when called upon to enforce the provisions of the anti-trust act the interpretation would be in harmony with the construction of the commerce clause which had been uniformly given in considering State enactments alleged to infringe or supposed to be an infringement upon this provision of the Constitution. In *re Greene*, 52 Fed. Rep., 104-119, in the first case in which the act in question was extensively treated. The question arose upon the petition for a writ of *habeas corpus*. The defendant and others under the form of what was called the Distilling and Cattle Feeding Co., a corporation organized under the laws of Illinois, had obtained possession and authority over such number of distilleries that the company controlled the manufacture and sale of 75 per cent. of all distillery products in the United States, and the defendants had fixed the price at which the purchasers should and did sell the products of the distilleries. Sales were made through agencies established in Massachusetts and other places, and one of the questions considered was whether that was a combination subject to the provisions of the anti-trust act, under which the defendant had been indicted, and Judge Jackson, afterwards Mr. Justice Jackson, ruled that it was not. Discussing the point of whether the whisky trust was subject to the act, the eminent judge observed:

"It is very certain the Congress could not, and did not, by this enactment, attempt to prescribe limits to the acquisition, either by the private citizen or State corporation, of property which might become the subject of interstate commerce, or declare that, when the accumulation or control of property by legitimate means and lawful methods reached such magnitude or proportions as enabled the owner or owners to control the traffic therein, or any part thereof, among the States, a criminal offense was committed by such owner or owners. All persons individually

or in corporate organizations, carrying on business avocations and enterprises involved the purchase, sale or exchange of articles, or the production and manufacture of commodities, which form the subjects of commerce, will in a popular sense monopolize both State and interstate traffic in such articles or commodities, just in proportion as the owner's business is increased, enlarged and developed. But the magnitude of a party's business, production or manufacture, with the incidental and indirect powers thereby acquired, and with the purpose of regulating prices and controlling interstate traffic in the articles or commodities, forming the subject of such business, production or manufacture, is not the monopoly or attempt to monopolize which the statute condemns."

And speaking somewhat more specifically, it was further said:

"It was certainly not a monopoly, in the legal sense of the term for the accused, or the Distilling & Cattle Feeding Company, to own 70 distilleries, and the products thereof, whether such products amounted to the whole or a large part of what was produced in the country. Their ownership and control of such products, as subjects of trade and commerce, is not what the statute condemns, but the monopoly or attempt to monopolize the interstate trade or commerce therein. In this acquisition and operation of the 70 distilleries, which enabled the accused or said Distilling and Cattle Feeding Co. to manufacture and control the sale of 75 per cent. of the distillery products of the country, it does not appear, nor is it alleged, that the persons from whom said distilleries were acquired were placed under any restraint, by contract or otherwise, which prevented them from continuing or re-engaging in such business. All other persons who chose to engage therein were at liberty to do so. The effort to control the production and manufacture of distillery products by the enlargement and the extension of the business, was not an attempt to monopolize trade and commerce in such products within the meaning of the statute, and may, therefore, be left out of further consideration."

Much of the discussion in the opinion is devoted to showing that the trust agreement there considered was neither a monopoly nor a contract in restraint of trade, according to the common-law sense, which it was held in that and subsequent cases must be  
344 allowed to settle the question of what is a monopoly, a contract in restraint of trade in the absence of any definition in the act of Congress. In the previous case of *In re Terrell*, 51 Fed. Rep., 215, Judge Lacombe had declared that:

"It is not the actual restraint of trade (if such be restraint of trade), that is made illegal by the statute, but the making of a contract in restraint of trade, of a contract which restrains or is intended to restrain trade."

The statute came before the Supreme Court of the United States for the first time in *The United States v. E. C. Knight*, 156 U. S., 1. The American Sugar Refining Co., a corporation existing under the laws of the State of New Jersey, being already in control of a large majority of the manufactories of refined sugar in the United States acquired, through the purchase of stock, four other refineries in

Philadelphia, and thus obtained such disposition over these refineries throughout the United States as gave it a practical monopoly of the business, and it was held that the result of the transaction was the creation of a monopoly in the manufacture and sale of a necessary of life, but it was nevertheless distinctly held that the monopoly was not one which could be suppressed under the provisions of the act of Congress now in question, and that the business of sugar-refining in Pennsylvania bore no direct relation to commerce between the States, nor with foreign nations, and the doctrine upon this subject and the distinctions before adverted to, which pervade all of the previous cases, are again declared in the opinion with great clearness. Mr. Chief Justice Fuller, speaking for the court, said :

"The argument is that the power to control the manufacture of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that therefore, the General Government in the exercise of the power to regulate commerce may repress such monopoly and set aside the instruments which have created it. But this argument cannot be confined to necessities of life merely, and must include all articles of general consumption. Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not a primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed, or whenever the transaction is itself a monopoly of commerce.

It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however some time perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union the other is essential to the preservation of the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne than the risk be run, in the effort to suppress them of more serious consequences by resorts to expedients of even doubtful constitutionality.

It will be perceived how far-reaching the proposition is that the power of dealing with a monopoly directly may be exercised by the General Government whenever interstate or international commerce may be ultimately affected."

After referring with approval to *Gibbons v. Ogden*; *Brown v. Maryland*, and other previous cases, the opinion was concluded by saying:

"It was in the light of well-settled principles that the act of July

2nd, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such, or to limit and restrict the rights of corporations created by the States or the citizen of the States in the acquisition, control or disposition of property, or to regulate or prescribe the price or prices at which such property or the products thereof should be sold, or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts and conspiracies to monopolize trade and commerce among several States or with foreign nations; but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of refining in Pennsylvania, and bore no direct relation to commerce between the States or with foreign nations. \* \* \*

The subject-matter of the sale was shares of manufacturing stock, and the relief sought was the surrender of property which has already passed and the suppression of the alleged monopoly in manufacture by the restoration of the *status quo*, before the transfers; yet the act of Congress only authorized the circuit courts to proceed by way of  
 346 preventing and restraining violations of the act in respect to contracts, combinations or conspiracies in restraint of interstate or international trade or commerce." 156 U. S., 16 and 17.

It is a doctrine expressly stated and clearly implied in these cases that the act of Congress does not and could not constitutionally deal directly with a monopoly or a contract in restraint of trade, as such according to the common-law definition of those terms, and as has been seen the act of Congress gives no definition of its own. To do so would be clearly to trench upon the exclusive jurisdiction of the States. Federal authority exists only when a monopoly or a contract in restraint of trade assumes such form or has such effect as to go beyond any common-law conception of these terms, and interferes directly and substantially with interstate commerce, or commerce with foreign nations, and this it must do directly and not incidentally.

Now, I am unable to perceive, in the light of these cases, that the act of Congress can be regarded as applicable to the association under consideration. It cannot be suggested and has not been, that this association had in contemplation as one of its purposes the subjects of interstate commerce any more than an ordinary manufacturing establishment would have, where the products of such manufactory must find a market in other States as well as in domestic demand. It seems to me evident that private gain was the subject of the association, just as was observed in regard to the sugar trust in *United States v. E. C. Knight*. Nor does the mode in which the association conducts its business have any direct relation to interstate commerce as far as I can see. The sugar trust was confessedly a monopoly in the common-law sense, and in a commodity of prime necessity. And the extent to which interstate commerce would be used as an instrument in carrying on its business would be in mag-

nitute out of all proportion to a similar use made by the association in question.

The learned district attorney has leveled most of his criticism at the bonus feature of the association, but it has not been pointed out, and I think cannot be, how the manner of using the bonus operates in restraint of interstate commerce. The object of the bonus and of the association really is not to prevent all members of the association from furnishing and shipping their manufactured products, but to determine among themselves which one of them shall do so, and it is really contemplated that some one will do so. There is certainly no

347 restraint in this as the supply in such case is regulated by the demand, so far as shipment is concerned. It has not been argued that the fact that certain cities are reserved to a particular company, would bring the association within the provisions of the act. It is true that generally one of the reserved cities is that in which the company has its chief place of business, for example, the Chattanooga pipe and foundry works is allowed, under the arrangement, to supply the city of Chattanooga and New Orleans. If it be argued that this prevents companies in other States from shipping goods to Chattanooga, it would be merely to follow a theory having no practical bearing on the case, because in the absence of an association, the entire freight charges being in favor of the local company, and the disposition to patronize a local concern being in its favor, it would easily furnish the supplies.

It remains to remark, as should have been done before, that upon the bill and answer where the contract of association is admitted in the answer, as is virtually done here, but the allegations tending to show its sinister purposes, tendencies and effects contained in the bill, are denied by the answer, and averments are made in the answer tending to show just and equitable purpose and effect, the averments in such answer upon this application stand admitted, and the contract must be presumed to have been made for the purposes honestly as stated in the answer, unless the provisions of the agreement and the mode of doing business clearly show the contrary. In examination of such a contract fraud and illegality are not to be presumed, but must be proved as in all other cases. *United States v. Trans-Missouri Freight Association, et al.*, 58 Fed. Rep., 58.

It may be further observed, to prevent misconception, that in a suit such as this, in the name of the United States, jurisdiction depends alone upon the act giving jurisdiction to enforce its provisions, and the court is concerned with no case between private persons or corporations where jurisdiction depends on other conditions, and in which proceeding a common-law remedy might become available.

Having reached the conclusion that the defendant association is not subject to the provisions of the act of Congress according to the ruling *In re Greene*, and in *United States v. E. C. Knight*, I do not feel called upon to dispose of the other issues made in this case, and the bill is therefore dismissed.

CLARK, J.

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UNITED STATES  
v.  
ADDYSTON PIPE & STEEL CO. }

*Order of December 19th, 1896.*

Entered, Journal E, page 588, Feb. 10th, 1897.

UNITED STATES  
vs.  
THE ADDYSTON PIPE & STEEL CO. ET AL. }

Upon application of defendants' counsel, and by consent of petitioner, defendants are allowed until the 10th day of January, 1897, in which to answer the petition filed in this cause, and the hearing of the application for injunction is continued until the 25th day of January, 1897.

This order was made on the 19th day of December, 1896, and is entered now for then.

*Final Decree.*

Entered, Journal "E," page 589. Filed Feb. 12th, 1897.

In the United States Court for the Southern Division of the Eastern District of Tennessee.

UNITED STATES  
vs.  
ADDYSTON PIPE & STEEL CO. ET AL. }

This cause came on to be heard on the 25th day of January, 1897, when the district attorney moved the court for leave to dismiss the amended petition filed in this cause, which motion was granted, and it was thereupon ordered that said amended petition be dismissed.

The district attorney further moved the court to strike from the file the demurrer of the defendants because filed after obtaining leave of the court for further time in which to answer, and no leave of the court was given to file the demurrer. The motion was overruled, to which exception was taken. The district attorney also moved the court to strike from the file the demurrer of defendants because overruled by the answer, as they had answered as to the same matters contained in their demurrer. This motion was also overruled, to which exception was taken. The cause was thereupon heard upon application for injunction as prayed in the  
349 original bill, which hearing was by stipulation of the parties treated as to a hearing upon the merits, and the cause was thereupon heard upon the petition of the United States, the demurrer and answer of the defendants, the affidavits filed by plaintiff and defendants, from all of which the court was of opinion that the plaintiff was not entitled to the injunction prayed for; that the merits of the petition were fully met and denied by the answer, and.



were not sustained by the proof, the court being of the opinion that the association between defendants was not a contract or combination in restraint of trade, or monopoly of trade and commerce, under the act of Congress of July 2d, 1890.

It was therefore ordered, adjudged and decreed, that the petition filed against the defendants be dismissed, and that petitioner pay the costs of this cause.

In the event this case be appealed, the clerk will copy the affidavit of M. L. Holman into the record, with the other evidence of the petitioner, the same having been read on the hearing but not attached as an exhibit to the petition for contempt.

Petitioner, by James H. Bible, the district attorney, then and there excepted to the decree of the court, denying it relief against the defendants and denying it an injunction according to the prayer of its petition.

*Petition for Appeal and Order. Filed February 12th, 1897.*

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

UNITED STATES

vs.

THE ADDYSTON PIPE & STEEL Co., HOWARD-HARRISON  
Iron Co., Anniston Pipe & Foundry Co., South Pitts-  
burg Pipe Works, and The Chattanooga Foundry &  
Pipe Works. } No. 539.

Petition for appeal.

To the judges of the circuit court of the United States for the southern division of the eastern district of Tennessee:

And now comes the United States, petitioner in the foregoing cause, by Judson Harmon, its attorney general, and James H. Bible, United States attorney for the eastern district of Tennessee, and complains and says that in the records and proceedings, and also in the rendition of the decree of the 2d day of February, 1897, and entered of record of said date, manifest error has intervened to the great damage and hurt of your petitioner.

Wherefore it prays for an appeal and for such other process as may cause the same to be corrected by the United States circuit court of appeals for the sixth circuit, and it herewith files its assignment of errors.

UNITED STATES,

By JAMES H. BIBLE,

*United States Att'y for the Eastern Dist. of Tennessee.*

The foregoing petition is allowed, this 12th day of February, 1897.

CHARLES D. CLARK,  
*District Judge.*

*Assignment of Errors. Filed February 12th, 1897.*

In the Circuit Court of the United States for the Southern Division  
of the Eastern District of Tennessee.

UNITED STATES

VS.

ADDYSTON PIPE & STEEL CO., DENNIS LONG & CO., HOWARD-  
Harrison Iron Co., Anniston Pipe & Foundry Co., South Pitts-  
burg Pipe Works, and Chattanooga Foundry and Pipe Works. }

And now comes the United States by Judson Harmon, its attorney general, and James H. Bible, United States attorney for the eastern district of Tennessee, and says that the decree in said cause, denying it relief according to the prayer of its petition against the defendants named in the caption, and dismissing its petition and adjudging the costs against petitioner, is erroneous and against the just rights of petitioner for the following reasons, to wit:

1. The court erred in overruling petitioner's motion to strike from the file the demurrer of defendants filed to its petition, the same having been filed after an order granted at chambers giving further time in which to answer, and continuing the hearing 351 of petitioner's application for injunction for that purpose, and no permission of the court having been obtained to file said demurrer.

2. The court erred in overruling petitioner's further motion to strike out said demurrer because defendants had answered as to the same matters contained in said demurrer.

3. The court erred in decreeing that the association or agreement existing between defendants was not a contract in restraint of trade or commerce among the States.

4. The court erred in decreeing that defendants had not monopolized, or attempted to monopolize, or combined or conspired together to monopolize part of the trade and commerce in cast-iron pipe among the States.

5. The court erred in decreeing that the association existing between the defendants did not subject them to the provisions of the act of Congress of July 2d, 1890.

6. The court erred in denying petitioner the relief sought by its petition and in dismissing said petition.

Wherefore petitioner prays that said decree be reversed and that said court be directed to enter decree against the defendants herein in accordance with the prayer of its petition.

UNITED STATES,  
By JAMES H. BIBLE,  
U. S. Attorney.

THE UNITED STATES.

*Order for Appeal.*

Entered, Journal "E," page 591. Filed Feb. 13th, 1897.

UNITED STATES  
vs.  
ADDYSTON PIPE & STEEL CO. ET AL. }

Petitioner has this day presented to the court its petition for appeal, together with an assignment of errors, to the decree pronounced in this cause, and upon application of the district attorney the appeal is granted, and said petition and assignment of errors are ordered filed in this cause.

UNITED STATES OF AMERICA, } ss:  
*Eastern District of Tennessee,* }

352 I, Crawford T. Johnson, deputy clerk of the circuit court of the United States for the southern division of the eastern district of Tennessee, do hereby certify the above and foregoing to be a full, true and complete transcript of the records in a certain cause in said court where The United States is plaintiff, and The Addyston Pipe & Steel Co. *et al.* are defendants, as the same appears of record and remains on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office in the city of Chattanooga, Tenn., this 24th day of February, A. D. 1897.

[SEAL.]

CRAWFORD T. JOHNSON.

*Deputy Clerk.*

353 And afterwards, to wit, on April 22nd, 1897, the following appearance was filed in said cause in said court, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit, October Term, 1896.

UNITED STATES OF AMERICA }  
vs. } No. 498.  
ADDYSTON PIPE & STEEL CO. }

To the clerk of said court:

Please enter my appearance as counsel for the appellants.

JAMES H. BIBLE,

*U. S. Attorney, Eastern District of Tennessee.*

And afterwards, to wit, on April 28th, 1897, a notice of motion to advance the hearing of said cause was served upon counsel for appellees, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA  
vs.  
ADDYSTON PIPE & STEEL CO. ET AL. } No. 498.

The defendants will take notice that on Tuesday, the 4th day of May, 1897, The United States, above-named petitioner, will  
351 move the court to advance this cause for hearing and fix a day for hearing the same during the May session (1897) of the court.

UNITED STATES,  
By JAMES H. BIBLE,  
*United States Attorney.*

UNITED STATES OF AMERICA  
vs.  
ADDYSTON PIPE & STEEL CO. ET AL. }

We acknowledge service of this notice by copy left with us. We also acknowledge receipt of a printed copy of the record in this case, as well as a copy of the printed brief of J. H. Bible, att'y.

This April 27th, 1897.

BROWN & SPURLOCK.

And afterwards, to wit, on May 26th, 1897, the following order was entered upon the journal of said court in said cause, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA  
vs.  
ADDYSTON PIPE & STEEL CO.  
et al. } Appeal from the Circuit Court of the United States for the Eastern District of Tennessee.

Before Harlan, Taft, and Lurton, JJ.

This cause came on this day to be heard and was argued in part by Mr. James H. Bible, for the appellants, and Mr. Frank Spurlock, for the appellees, and the hearing is continued until tomorrow morning.

355 And afterwards, to wit, on May 27th, 1897, the following order was entered upon the journal of said court in said cause; which order reads and is as follows:

## United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA	}	Appeal from the Circuit Court of the United States for the Eastern Dis- trict of Tennessee.
vs.		
ADDYSTON PIPE & STEEL CO. et al.		

Before Judges Harlan, Taft, and Lurton.

This cause came on to be further heard this day and was argued by Mr. Frank Spurlock, for the appellees, and by Mr. Edward Whitney, for the appellants, and is submitted to the court for a decree.

And afterwards, to wit, on February 14th, 1898, a decree was entered in said court in said cause; which decree is in the words and figures as follows:

## United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA	}	Appeal from the Circuit Court of the United States for the Eastern Dis- trict of Tennessee.
vs.		
ADDYSTON PIPE & STEEL CO. et al.		

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the eastern district of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and  
 356 in this cause be, and the same is hereby, reversed, with in-  
 structions to enter a decree for the United States, perpetually  
 enjoining the defendants from maintaining the combination in  
 cast-iron pipe described in the bill, and from doing business there-  
 under.

And afterwards, to wit, on February 19th, 1898, an opinion was filed in said court in said cause; which opinion reads and is as follows:

*Opinion.*

357 United States Circuit Court of Appeals, Sixth Circuit.

THE UNITED STATES OF AMERICA	}	No. 498. Appeal from the Circuit Court of the United States for the Eastern District of Tennessee.
vs.		
THE ADDYSTON PIPE & STEEL CO., DENNIS		
LONG & Co., Howard-Harrison Iron Co.,		
Anniston Pipe & Foundry Co., South		
Pittsburg Pipe Works, and Chattanooga Foundry and Pipe Works.		

Submitted May 27, 1897; decided February 8, 1898.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

This was a proceeding in equity begun by petition filed by the Attorney General on behalf of the United States against six corpo-

rations engaged in the manufacture of cast-iron pipe, charging them with a combination and conspiracy in unlawful restraint of interstate commerce in such pipe in violation of the so-called anti-trust law passed by Congress, July 2, 1890. The defendants were The Addyston Pipe & Steel Company, of Cincinnati, Ohio; Dennis Long & Co., of Louisville, Kentucky; The Howard-Harrison Iron Company, of Bessemer, Alabama; The Anniston Pipe & Foundry Company, of Anniston, Alabama; The South Pittsburg Pipe Works, of South Pittsburg, Tennessee, and The Chattanooga Foundry & Pipe Works, of Chattanooga, Tennessee.

The petition prayed that all pipe sold and transported from one State to another, under the combination and conspiracy described herein, be forfeited to the petitioner and be seized and confiscated in the manner provided by law, and that a decree be entered dissolving the unlawful conspiracy of defendants and perpetually enjoining them from operating under the same and from selling said cast-iron pipe in accordance therewith to be transported from one State into another.

The defendants filed a joint and separate demurrer to the 358 petition in so far as it prayed for the confiscation of goods in transit, on the ground that such proceedings under the anti-trust act are not to be had in a court of equity, but in a court of law. In addition to the demurrer, the defendants filed a joint and separate answer, in which they admitted the existence of an association between them for the purpose of avoiding the great losses they would otherwise sustain, due to ruinous competition between defendants, but denied that their association was in restraint of trade, State or interstate, or that it was organized to create a monopoly and denied it was a violation of the anti-trust act of Congress.

Testimony in the form of affidavits was submitted by petitioner and defendants and by stipulation it was agreed that the final hearing might be had thereon. Judge Clark, who presided in the circuit court, dismissed the petition on the merits. His opinion is reported in the 78 Fed. Rep., 712.

From the minutes of the association a copy of which was put in evidence by the petitioner, it appeared that prior to December 28, 1894, the Anniston Company, the Howard-Harrison Company, the Chattanooga Company and the South Pittsburg Company had been associated as the Southern Associated pipe works. Upon that date the Addyston Company and Dennis Long & Co. were admitted to membership and the following plan was then adopted:

"First. The bonuses on the first 90,000 tons of pipe secured in any territory, 16" and smaller, shall be divided equally among six shops.

"Second. The bonuses on the next 75,000 tons, 30" and smaller, sizes to be divided among five shops, South Pittsburg not participating.

"Third. The bonuses of the next 40,000 tons, 36" and smaller, sizes to be divided among four shops, Anniston and South Pittsburg not participating.



"Fourth. The bonuses on the next 15,000 tons, consisting of all sizes of pipe, shall be divided among three shops, Chattanooga, South Pittsburg and Anniston not participating.

"The above division is based on the following tonnage of capacity:

South Pittsburg ...	15,000 tons.
Anniston .....	30,000 tons.
Chattanooga .....	40,000 tons.
Bessemer .....	45,000 tons.
Louisville .....	45,000 tons.
Cincinnati...	45,000 tons.

"When the 220,000 tons have been made and shipped and the bonuses divided as hereafter provided, the auditor shall set aside into a reserve fund all bonuses arising from the excess of shipments over 220,000 tons and shall divide the same at the end of the year among the respective companies according to the percentage of the excess of tonnage they may have shipped (of the sizes made by them) either in pay or free territory. It is also the intention of this proposition that the bonuses on all pipe larger than 36 inches in diameter shall be divided equally between the Addyston Pipe & Steel Company, Dennis Long & Co., and the Howard-Harrison Company."

"It was thereupon resolved:

"First. That this agreement shall last for two years from the date of the signing of same, until December 31, 1896.

"Second. On any question coming before the association requiring a vote, it shall take five affirmative votes thereon to carry said question, each member of this association being entitled to but one vote.

"Third. The Addyston Pipe & Steel Company shall handle the business of the gas and water companies of Cincinnati, Ohio, Covington and Newport, Ky., and pay the bonus hereafter mentioned, and the balance of the parties to this agreement shall bid on such work such reasonable prices as they shall dictate.

"Fourth. Dennis Long & Company, of Louisville, Ky., shall handle Louisville, Ky., Jeffersonville, Ind., and New Albany, Ind., furnishing all the pipe for gas and water works in above-named cities.

"Fifth. The Anniston Pipe & Foundry Company shall handle Anniston, Ala., and Atlanta, Ga., furnishing all pipe for gas and water companies in above-named cities.

"Sixth. The Chattanooga foundry & pipe works shall handle Chattanooga, Tenn., and New Orleans, La., furnishing all gas and water pipe in the above-named cities.

"Seventh. The Howard-Harrison Iron Company shall handle Bessemer and Birmingham, Ala., and St. Louis, Mo., furnishing all pipe for gas and water companies in the above-named cities; extra bonus to be put on East St. Louis and Madison, Ill., so as to protect the prices named for St. Louis, Mo.

"Eighth, South Pittsburg pipe works shall handle Omaha, Neb.,

on all sizes required by that city during the year of 1895, conferring with the other companies and co operating with them; thereafter they shall handle the gas and water companies of Omaha, Neb., on such sizes as they make.

"NOTE.—It is understood that all the shops who are members of this association shall handle the business of the gas and water companies of the cities set apart for them, including all sizes of pipe made by them.

"The following bonuses were adopted for the different States as named below: All railroad or culvert pipe or pipe for any drainage or sewerage purposes on 12" and larger sizes shipped into bonus territory shall pay a bonus of \$1.00 per ton. On all sizes below 12" and shipped into 'bonus territory' for the purposes above named, there shall be a bonus of \$2.00 per ton.

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*List of Bonuses.*

Alabama .....	\$3 00	S. D. ....	\$2 00	Ky. ....	\$2 00
B'gham, Ala. ....	2 00	Florida. ....	1 00	La. ....	3 00
Anniston, Ala. ....	2 00	Georgia. ....	2 00	Miss. ....	4 00
Mobile, Ala. ....	1 00	Atlanta, Ga. ....	2 00	Mo. ....	2 00
Arizona Ter. ....	3 00	Ga. coast p'ts. ....	1 00	Montana ....	3 00
California ....	1 00	Idaho. ....	2 00	Nebraska. ....	3 00
Colorado ....	2 00	Nev. ....	3 00	N. Mex. ....	3 00
Ind. Ter. ....	3 00	Oklahoma ....	3 00	S. C. ....	1 00
North C. ....	1 00	Wis. ....	2 00	Minn. ....	2 00
Tenn., east of C'-					
land. ....	2 00	Texas, interior. ....	3 00		
Tenn., middle and					
west ....	3 00	Texas coast. ....	1 00		
Illinois, except Madison and East St. Louis, as previously provided. ....					2 00
Wyoming ....	4 00	Wash'ton Ter. ....	1 00	Utah. ....	4 00
Oregon ....	1 00	Michigan. ....	1 50	Indiana ....	2 00
Ohio ....	1 50	West Va. ....	1 00	Iowa. ....	2 00
N. D. ....	2 00	Kansas. ....	2 00		

"All other territory free.

"On motion of Mr. Llewellyn, the bonuses on all city work as specially reserved shall be \$2.00 per ton."

The States for sales in which bonuses had to be paid into the association were called "pay" territory as distinguished from "free" territory in which defendants were at liberty to make sales without restriction and without paying any bonus.

The by-laws provided for an auditor of the association whose duty it was to keep account of the business done by each shop both in pay and free territory. On the 1st and 16th of each month, he was required to send to each shop "a statement of all shipments reported in the previous half month, with a balance sheet showing the total amount of the premiums on shipments, the division of the same and debit credit balance of each company."

The system of bonuses as a means of restricting competition and maintaining prices was not successful. A change was therefore made by which prices were to be fixed for each contract by the association and except in reserved cities, the bidder was determined by competitive bidding of the members, the one agreeing to give the highest bonus for division among the others getting the contract.

The plan was embodied in a resolution passed May 27, 1895, in the words following:

"Whereas, the system now in operation in this association of having a fixed bonus on the several States, has not in its operation resulted in the advancement in the prices of pipe as was anticipated, except in reserved cities, and some further action is imperatively necessary in order to accomplish the ends for which this association was formed. Therefore, be it resolved, that from and after the first day of June, that all competition on the pipe lettings shall take place

among the various pipe shops prior to the said letting. To  
361 accomplish this purpose it is proposed that the six competitive shops have a representative board located at some central city to whom all inquiries for pipe shall be referred, and said board shall fix the price at which said pipe shall be sold, and bids taken from the respective shops for the privilege of handling the order, and the party securing the order shall have the protection of all the other shops."

In pursuance of the new plan it was further agreed "that all parties to this association having quotations out shall notify their customers that the same will be withdrawn by June 1, 1895, if not previously accepted and upon all business accepted on and after June 1st, bonuses shall be fixed by the committee."

At the meeting of December 19, 1895, it was moved and carried, that upon all inquiries for prices from "reserved cities" for pipe required during the year of 1896, prices and bonuses should be fixed at a regular or called meeting of the principals.

At the meeting of December 20, 1895, the plan for division of bonuses originally adopted, was modified by making the basis the total amounts shipped into "pay" territory rather than the totals shipped into "pay" and "free" territory.

To illustrate the mode of doing business the following excerpt from the minutes of the meetings of December 20, 1895, February 14, 1896, and March 13, 1896, is given.

"It was moved to sell the 519 pieces of 20" pipe from Omaha, Neb., for \$23.40, delivered. Carried. It was moved that Anniston participate in the bonus and the job be sold over the table. Carried. Pursuant to the motion, the 519 pieces of 20" pipe for Omaha was sold to Bessemer at a premium of \$8."

"Moved that 'bonus' on Anniston's Atlanta water-works contract be fixed at \$7.10, provided freight is \$1.60 a ton. Carried."

An illustration of the manner in which "reserved" cities were dealt with may be seen in the case of a public letting at St. Louis. On February 4, 1896, the water department of that city let bids for 2,800 tons of pipe. St. Louis was "reserved" to the Howard-Harrison Company, of Bessemer, Ala. The price was fixed by the association at \$24 a ton, and the bonus at \$6.50. Before the letting the vice-president of this company wrote to the other members of the association under date of January 24, 1896, as follows:

"I write to say that in view of the fact that I do not as yet know what the drayage will be on this pipe. I prefer that if any of you find it necessary to put in a bid without going to St. Louis, please

bid not less than \$27 for the pipe, and 2½ cents per pound for the specials. I would also like to know as to which of you would find it convenient to have a representative at the letting. It will be necessary to have two outside bidders."

362 The contract was let to the Howard-Harrison Company, of Bessemer, at \$24, who allowed the Shickle, Harrison & Howard Company, a pipe company of St. Louis, not in the association, but having the same president as the Howard-Harrison Company, of Bessemer, to fill part of the order. The only other bidders were the Addyston Pipe & Steel Company, and Dennis Long & Co., the former bidding \$24.37, and the latter \$24.57. The evidence shows that the Chattanooga foundry could have furnished this pipe, delivered in St. Louis, at from \$17 to \$18 and could have made a profit on it at that price. The record is full of instances of a similar kind, in which, after the successful bidder had been fixed by the "auction pool" or had been fixed by the arrangement as to "reserve" cities, the other defendants put in bids at the public letting as high as the selected bidder requested, in order to give the appearance of active competition between defendants.

In January, 1896, after the auction pool had been in operation for more than six months, the Chattanooga Company wrote a letter to its representative in the central committee to outline its policy for the new year, and the statements of the letter cast much light on the prices bid and the character of bonuses fixed. The letter is dated January 2, 1896, and is as follows:

"DEAR SIR: Referring to our policy for 1896, in bidding on pipe, we have had this matter under consideration for some time past, and from the information obtained from Mr. Thornton's statement as to the amount of business done last year in pay territory and from estimates that we have made for business, that will come into that territory for 1896, we have been able to determine to what point we could bid on work and take contracts, and if bonus is forced above this point, let it go and take the bonus. We note from your letter of yesterday that you have sized up the situation in its essential points, and it agrees exactly with our ideas on the subject. It is useless to argue that Howard-Harrison Iron Co., Cincinnati, and other shops, who have been bidding bonuses of \$6 or \$8 per ton, can come out and make any money if they continue to bid such bonus. In the case of the Howard-Harrison Iron Co., people on Jacksonville, Fla. The truth of the business is they are losing money at the prices they bid for this work. If they take the contract at \$19 delivered, it will only net \$16 at the shop after they have paid back the bonus of \$4.75; if they should continue to buy all the pipe that goes up to such figures as they have paid for Jacksonville and other points, they would wreck their shop in a few months. However, they of course calculate this bonus will be returned to them on work taken by other shops. We are very much pleased with the bonus that has been paid and we only hope they will keep it up as it is only money in our pockets. As long as there is no money to us let them make the pipe, as we shall continue to do so.

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"For the present you will adopt the following basis:

"On 16" and under standard weights, \$14.25 at shop.

"On 18" and 36" standard weights, \$13.

"On 16" and under light weights \$14.50 to \$14.75 at shop.

"That is you will bid all over \$13, \$14.25 and \$14.50 on work.

If we get work at these prices it will be satisfactory. If the others run bonus above this point, let them take it as it will be more money to us to take the bonus.

"We note Mr. Thornton's report of average premiums from June 1st to December, that the average was \$3.63. The average bonuses that are prevailing today are \$7 to \$8. We cannot expect this to continue and we think your estimate of \$6 ton average bonus is high—as we do not believe the premiums for '96 will average that price, unless there is a decided change for the better in business. We find there was sold and shipped into pay territory from January 1, 1895, to date, including the 40,000 tons of old business that did not pay a bonus, about 188,000 tons, and we think a very conservative estimate of shipments into this territory will amount to fully 200,000 this year; more than that, probably overrun 240,000 tons from the fact that the city of Chicago and several other places that annually use large quantities of pipe were not in the market last year, or last season, from the fact that they were out of funds. On the basis as given you above, if the demand should reach 220,000 tons, which would give us our entire 40,000 tons, provided we did no business, then the association would pay us the average 'bonus' which might be from \$3.50 to \$5 on our 40,000. If we cannot secure business in 'pay territory' at paying prices, we think we will be able to dispose of our output in 'free territory,' and of course make some profit on that.

"At the prices that Howard-Harrison people paid for Jacksonville, Des Plaines and one or two other points, they are losing from \$2.50 to \$3 per ton, that is, provided 'bonuses' would not be returned to them. Therefore when business goes at a loss, we are willing that other shops make it."

Another letter written by the same company pending a trouble over a letting at Atlanta is significant. The Anniston Company to whom Atlanta had been "reserved" made its bid so high (\$24) that a Philadelphia pipe firm, R. D. Wood & Co., had been able to underbid the Anniston Company in spite of difference in freights. All the bids had been rejected as too high, and upon a second letting, Anniston's bid was \$1.25 a ton less and the job was awarded to it. The charge was then made by Atlanta persons that there was a "trust" or "combine." This was vigorously denied. The letter of the Chattanooga Company evoked by this difficulty was dated February 25, 1896, and read as follows:

364 "GENTLEMEN: We are in receipt of a carbon copy of your favor of the 24th instant to F. B. Nichols, V. P., in reference to Atlanta, Ga. We certainly regret that the matter has assumed its present shape and that R. D. Wood & Company should make a lower bid by one dollar a ton than the southern shops. You



know we have always been opposed to special customers and 'reserved cities,' we do not think that it is the right principle and we believe if the present association continues, that all special customers and 'reserved cities' should be wiped out; there is no good reason why we should be allowed to handle New Orleans, you Atlanta, Howard-Harrison Iron Co., St. Louis, or South Pittsburg, Omaha. We are not in the business to award special privileges to any foundry and we believe that the result would be more benefit to all concerned, if all business was made competitive. It is hardly right, and we believe if you will think over the matter carefully, you will concede it, for us to be put into a position of being unable to make prices or furnish pipe for the city of Atlanta, when we have always heretofore had a large share of their trade. We cannot explain our position to the Atlanta people and we consider it is detrimental to our business and think no combination should have the power to force us into such a position. The same argument will apply with you as to New Orleans, St. Louis and other places. We think this matter should be considered seriously and some action taken that will result in re-establishing ourselves (I mean the four southern shops), in the confidence of the Atlanta people. Wistar, R. D. Wood & Company's man has no doubt told them all about our association, or as much as he could guess, and has worked up a very bitter feeling against us. The very fact that you have been protected and have had all their business for the past two years is proof to them that such a 'combination' exists, and they state that if they find out positively that we are working together, they will never receive a bid from any one of us again. We cannot afford to leave these people under that impression and something ought to be done that would disprove Mr. Wistar's statement to them. We believe that all business ought to be competitive. The fact that certain shops have certain cities 'reserved' is all based upon mere sentiment and no good reason exists why it should be so. We believe that, as a general thing, we have had our prices entirely too high and especially do we believe this has been the case as to prices in 'reserved cities.' The prices made at St. Louis and Atlanta are entirely out of all reason, and the result has been and always will be, when high prices are named, to create a bad feeling and an agitation against the 'combination.' There is no reason why Atlanta, New Orleans, St. Louis or Omaha, should be made to pay higher prices for their pipe than other places near them who do not use anything like the amount of pipe and whose trade is not as desirable for many  
 365 other reasons. There is no sentiment existing with us in reference to Atlanta as we would as soon sell our pipe anywhere else, only as stated above, it is wrong in principle that we should be forced to give up Atlanta or any other point for no good reason that we know of."

It appears quite clearly from the prices at which the Chattanooga and the South Pittsburg companies offered pipe in "free" territory that any price which would net them from \$13 to \$15 a ton at their foundries would give them a profit. Pipe was freely offered by the



defendants in "free" territory more than five hundred miles from their foundries at less prices than their representative board fixed prices for jobs let in cities in "pay" territory nearer to defendants' foundries by three hundred miles or more.

The defendants adduced many affidavits of a formal type, chiefly from persons who had been buying pipe from defendants and other companies who testified in a general way that the prices at which the pipe had been offered by defendants all over the country had been reasonable, but in not one of the affidavits was any attempt made to give figures as to cost of production and freight and in not a single case were the specific instances shown by the evidence for the petitioner disputed.

The evidence as to the capacity of the defendants' mills is by no means satisfactory. The division of bonuses was based on an aggregate yearly output of 220,000 tons, but there are averments in the answer that indicate that this was not a statement of the actual limit of capacity, but was only taken as a standard of restricted output upon which to calculate an equitable division of bonuses. Nowhere in the large mass of affidavits is there any statement of the *per diem* capacity of defendants' mills. Taking their aggregate capacity, however, as 220,000 tons, that of the other mills in the "pay" territory was 170,500 tons, and that of the mills in "free" territory was 348,000 tons, according to the affidavit of the chief officer of one of defendants. Of the non association mills in the "pay" territory one was at Pueblo, Col., another was in the State penitentiary at Waco, Tex., and a third in Oregon. Their aggregate annual capacity was 45,500 tons. Another non-association mill was the Shickle, Howard-Harrison mill of St. Louis, Mo., with a capacity of 12,000 tons. John W. Harrison, who was president of this company, was also president of the Howard-Harrison mill of Bessemer, Ala., which was a member of the association, and it appears that an order taken by the Bessemer mill at St. Louis was partly filled by the St. Louis mill. The other mills in the "pay" territory were one at Columbus, Ohio, with an annual capacity of 30,000 tons, one at Cleveland, Ohio, of 60,000 tons, one at New Comerstown, in northeastern Ohio, of 8,000 tons, and one at Detroit, Mich., of 15,000 tons, and their aggregate annual capacity was 113,000 tons. In the "free" territory there was one mill in eastern Virginia with an annual capacity of 16,000 tons, four mills in eastern Pennsylvania with a capacity of 87,000 tons, three mills in New Jersey with a capacity of 210,000 tons, and two mills in New York, one at Utica and another at Buffalo, with an aggregate capacity of 35,000 tons.

The evidence was scanty as to rates of freight upon iron pipes, but enough appeared to show that the advantage in freight rates which the defendants had over the large pipe foundries in New York, eastern Pennsylvania and New Jersey in bidding on contracts to deliver pipe in nearly all of the "pay" territory varied from \$2.00 to \$6.00 a ton, according to the location.

The defendants filed the affidavits of their managing officers in which they stated generally that the object of their association was

not to raise prices beyond what was reasonable, but only to prevent ruinous competition between defendants which would have carried prices far below a reasonable point; that the bonuses charged were not exorbitant profits and additions to a reasonable price, but they were deductions from a reasonable price in the nature of a penalty or burden intended to curb the natural disposition of each member to get all the business possible and more than his due proportion; that the prices fixed by the association were always reasonable and were always fixed as they must have been, with reference to the very active competition of other pipe manufacturers for every job; that the reason why they sold pipe at so much cheaper rates in the "free" territory, than in the "pay" territory, was because they were willing to sell at a loss to keep their mills going rather than to stop them; that the prices at a city like St. Louis in which the specifications were detailed and precise were higher because pipe had to be made especially for the job and they could not use stock on hand.

The defendants devoted a good deal of evidence to showing that the stenographer who furnished copies of the minutes of the association and of the correspondence between the members had a pecuniary motive in thus betraying the confidence of his employers, but no evidence was offered by them to contradict any statements made by him or to impeach the accuracy of the copies he has produced. On one point alone was he contradicted and that was in his statement that the bonuses represented the increase over and above a reasonable price made possible by the combination of the defendants.

TAFT, circuit judge, after stating the case as above, delivered the opinion of the court:

The first section of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," passed July 2, 1890, 26 Stat., 209, declares illegal "every contract, combination in the form of trust or otherwise or conspiracy in restraint of trade or commerce among the several States or with foreign nations." The second section makes it a misdemeanor for any

367 person to monopolize or attempt to monopolize, or combine or conspire with others to monopolize, any part of the trade or commerce among the several States. The fourth section of the act gives the circuit courts of the United States jurisdiction to hear and determine proceedings in equity brought by the district attorneys of the United States under the direction of the attorney general to restrain violations of the act.

Two questions are presented in this case for our decision. First, was the association of the defendants a contract, combination or conspiracy in restraint of trade as the terms are to be understood in the act? Second, was the trade thus restrained trade between the States?

The contention on behalf of defendants is that the association would have been valid at common law and that the Federal anti-trust law was not intended to reach any agreements that were not void and unenforceable at common law. It might be a sufficient

answer to this contention to point to the decision of the Supreme Court of the United States in *United States v. Trans Missouri Freight Association*, 166 U. S., 290, in which it was held that contracts in restraint of interstate transportation were within the statute whether the restraints would be regarded as reasonable at common law or not. It is suggested, however, that that case related to a quasi-public employment necessarily under public control and affecting public interests, and that a less stringent rule of construction applies to contracts restricting parties in sales of merchandise which is purely a private business, having in it no element of a public or quasi-public character. Whether or not there is substance in such a distinction, a question we do not decide, it is certain that if the contract of association which bound the defendants was void and unenforceable at the common law because in restraint of trade, it is within the inhibition of the statute if the trade it restrained was interstate. Contracts that were in unreasonable restraint of trade at common law were not unlawful in the sense of being criminal, or giving rise to a civil action for damages in favor of one prejudicially affected thereby, but were simply void and were not enforced by the courts. *Mogul Steamship Company v. McGregor, Gow & Company*, Appeal Cases (1892), 25; *Hornby v. Close*, L. R. 2 Q. B., 153; *Lord Campbell, J. C.*, in *Hilton v. Eckersly*, 6 E. & B., 47, 66; *Hannen, J.*, in *Farrer v. Close*, L. R. 4 Q. B., 602, 612. The effect of the act of 1890 is to render such contracts unlawful in an affirmative or positive sense and punishable as a misdemeanor, and to create a right of civil action for damages in favor of those injured thereby and a civil remedy by injunction in favor of both private persons and the public against the execution of such contracts and the maintenance of such trade restraints.

The argument for defendants is that their contract of association was not and could not be a monopoly because their aggregate tonnage capacity did not exceed thirty per cent. of the total tonnage capacity of the country; that the restraints upon the members of the association, if restraints they could be called, did not embrace all the States and were not unlimited in space; that such partial restraints were justified and upheld at common law if reasonable and only proportioned to the necessary protection of the parties; that in this case the partial restraints were reasonable because without them each member would be subjected to ruinous competition by the other, and did not exceed in degree of stringency or scope what was necessary to protect the parties in securing prices for their product that were fair and reasonable to themselves and the public; that competition was not stifled by the association because the prices fixed by it had to be fixed with reference to the very active competition of pipe companies which were not members of the association and which had more than double the defendants' capacity; that in this way the association only modified and restrained the evils of ruinous competition, while the public had all the benefit from competition which public policy demanded.

From early times it was the policy of Englishmen to encourage

trade in England and to discourage those voluntary restraints which tradesmen were often induced to impose on themselves by contract. Courts recognized this public policy by refusing to enforce stipulations of this character. The objections to such restraints were mainly two. One was that by such contracts a man disabled himself from earning a livelihood with the risk of becoming a public charge and deprived the community of the benefit of his labor. The other was that such restraints tended to give to the covenantee, the beneficiary of such restraints, a monopoly of the trade from which he had thus excluded one competitor and by the same means might exclude others. Chief Justice Parker, in 1711, in the leading case of *Mitchel v. Reynolds*, 1 P. Wms., 181, 190, stated these objections as follows:

"1st. The mischief which may arise from them, 1st, to the party by the loss of his livelihood and the subsistence of his family; 2d, to the public by depriving it of an useful member. Another reason is the great abuses these voluntary restraints are liable to; as, for instance, from corporations who are perpetually laboring for exclusive advantages in trade and to reduce it into as few hands as possible."

The reasons were stated somewhat more at length in *Alger v. Thacher*, 19 Pickering, 51, 54, in which the supreme judicial court of Massachusetts said:

"The unreasonableness of contracts in restraint of trade and business is very apparent, from several obvious considerations.

"1. Such contracts injure the parties making them because they diminish their means of procuring livelihoods and a competency for their families. They tempt improvident persons for the sake of present gain to deprive themselves of the power to make future acquisitions. And they expose such persons to imposition and oppression.

369 "2. They tend to deprive the public of the services of men in the employments and capacities in which they may be most useful to the community as well as themselves.

"3. They discourage industry and enterprise and diminish the products of ingenuity and skill.

"4. They prevent competition and enhance prices.

"5. They expose the public to all the evils of monopoly. And this especially is applicable to wealthy companies and large corporations who have the means unless restrained by law to exclude rivalry, monopolize business and engross the market. Against evils like these, wise laws protect individuals and the public by declaring all such contracts void."

The changed conditions under which men have ceased to be so entirely dependent for a livelihood on pursuing one trade, have rendered the first and second considerations stated above less important to the community than they were in the seventeenth and eighteenth centuries, but the disposition to use every means to reduce competition and create monopolies has grown so much of late that the fourth and fifth considerations mentioned in *Alger v. Thacher*, have certainly lost nothing in weight in the present day,

if we may judge from the statute here under consideration and similar legislation by the States.

The inhibition against restraints of trade at common law seems at first to have had no exception. See language of Justice Hull, Year Book, 2 Henry V, folio 5, pl. 26. After a time it became apparent to the people and the courts that it was in the interest of trade that certain covenants in restraint of trade should be enforced. It was of importance as an incentive to industry and honest dealing in trade, that after a man had built up a business with an extensive good will he should be able to sell his business and good will to the best advantage and he could not do so unless he could bind himself by an enforceable contract not to engage in the same business in such a way as to prevent injury to that which he was about to sell. It was equally for the good of the public and trade when partners dissolved and one took the business, or they divided the business, that each partner might bind himself not to do anything in trade thereafter which would derogate from his grant of the interest conveyed to his former partner. Again when two men became partners in a business, although their union might reduce competition, this effect was only an incident to the main purpose of a union of their capital, enterprise and energy to carry on a successful business, and one useful to the community. Restrictions in the articles of partnership upon the business activity of the members with a view of securing their entire effort in the common enterprise were, of course, only ancillary to the main end of the union, and were to be encouraged. Again, when one in business sold property with which the buyer might set up a rival business, it was certainly reasonable that the seller should be able to restrain the buyer from doing him an injury which, but for the sale, the buyer would be unable to inflict. This was not reducing competition but was only securing the seller against an increase of competition of his own creating. Such an exception was necessary to promote the free purchase and sale of property. Again, it was of importance that business men and professional men should have every motive to employ the ablest assistants, and to instruct them thoroughly, but they would naturally be reluctant to do so unless such assistants were able to bind themselves not to set up a rival business in the vicinity after learning the details and secrets of the business of their employers. In a case of this last kind, *Mallan v. May*, 11 M. & W., 652, Baron Parke said, "Contracts for the partial restraint of trade are upheld not because they are advantageous to the individual with whom the contract is made and a sacrifice *pro tanto* of the rights of the community, but because it is for the benefit of the public at large that they should be enforced. Many of these partial restraints on trade are perfectly consistent with public convenience and the general interest and have been supported; such is the case of the disposing of a shop in a particular place with a contract on the part of the vendor not to carry on a trade in the same place. It is in effect the sale of a good will and offers an encouragement to trade by allowing a party to dispose of all the fruits of his industry. \* \* \* And such is the



class of cases of much more frequent occurrence and to which this present case belongs of a tradesman, manufacturer or professional man taking a servant or clerk into his service with a contract that he will not carry on the same trade or profession within certain limits. \* \* \* In such a case the public derives an advantage in the unrestrained choice which such a stipulation gives to the employer of able assistants and the security it affords that the master will not withhold from the servant instruction in the secrets of his trade and the communication of his own skill and experience from the fear of his afterward having a rival in the same business."

For the reasons given then, covenants in partial restraint of trade are generally upheld as valid when they are agreements (1) by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property or business sold; (2) by a retiring partner not to compete with the firm; (3) by a partner pending the partnership not to do anything to interfere by competition or otherwise with the business of the firm; (4) by the buyer of property not to use the same in competition with the business retained by the seller; and (5) by an assistant, servant or agent not to compete with his master or employer after the expiration of his time of service. Before such agreements are upheld, however, the court must find that the restraints attempted thereby are reasonably necessary, (1, 2, 3,) to the enjoyment by the buyer of the property, good will or interest in the partnership bought, or  
 371 (4) to the legitimate ends of the existing partnership, or (5) to the prevention of possible injury to the business of the seller from use by the buyer of the thing sold, or (6) to protection from the danger of loss to the employer's business caused by the unjust use on the part of the employé of the confidential knowledge acquired in such business.

Under the first class, come the cases of *Mitchel v. Reynolds*, 1 P. Wms., 181; *Fowle v. Parke*, 131 U. S., 88; *Nordenfeldt v. The Maxim Nordenfeldt Company*, Appeal Cases (1894), 534; *Rousillon v. Rousillon*, 14 Ch. D., 351; *Leather Cloth Company v. Lorrison*, L. R. 9 Eq., 345; *Whittaker v. Howe*, 3 Beav., 383; *Diamond Match Company v. Roeber*, 106 N. Y., 473; *Tode v. Grose*, 127 N. Y., 480; *Beal v. Chase*, 31 Mich., 190; *Hubbard v. Miller*, 27 Mich., 15; *National Benefit Co. v. Union Hospital Co.*, 45 Minn., 272; *Whitney v. Slayton*, 40 Me., 224; *Pierce v. Fuller*, 8 Mass., 222; *Richards v. American Desk & Seating Company*, 87 Wis., 503. In the second class are *Tallis v. Tallis*, 1 El. & Bl., 391, and *Lange v. Werk*, 2 O. S., 520. In the third class are *Troy Laundry Machine Company v. Dolph*, 138 U. S., 617; 28 Fed. Rep., 553; and *Mathews v. The Associated Press*, 136 N. Y., 333. In the fourth class are *American Strawboard Company v. Haldeman*, 83 Fed. R., 619, and *Hitchcock v. Anthony*, 83 F. R., 779, both decisions of this court; *Oregon Navigation Co. v. Winsor*, 20 Wallace, 64; *Dunlop v. Gregory*, 9 N. Y., 241; *Hodge v. Sloan*, 107 N. Y., 244, while in the fifth class are the cases of *Horner v. Ashford*, 3 Bingham, 322; *Homer v. Graves*, 7 Bingham, 735; *Hitchcock v. Coker*, 6 Ad. & El., 454; *Ward v. Byrne*, 5 M. & W., 547; *Dubowski & Sons v. Goldstein*, 1 Q. B. (1896), 478; *Peels v. Saalfeld*, 2 Ch. (1892), 149; *Taylors*



*v. Blanchard*, 13 Allen, 370; *Keeler v. Taylor*, 53 Pa. St., 467; *Hereschoff v. Boutineau*, 17 R. I., 3.

It would be stating it too strongly to say that these five classes of covenants in restraint of trade include all of those upheld as valid at the common law, but it would certainly seem to follow from the tests laid down for determining the validity of such an agreement that no conventional restraint of trade can be enforced unless the covenant embodying it is merely ancillary to the main purpose of a lawful contract and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract or to protect him from the dangers of an unjust use of those fruits by the other party. In *Horner v. Graves*, 7 Bingham, 735, Chief Justice Tindal, who seems to be regarded as the highest English judicial authority on this branch of the law (see Lord Macnaghten's judgment in *Nordenfeldt v. The Maxim Nordenfeldt Co.*, Appeal Cases (1894), 535, 567), used the following language: "We do not see how a better test can be applied to the question whether this is or not a reasonable restraint of trade than by considering whether the restraint is such only as to afford a fair protection to the interests of the party in favor of whom it is given and not so large as to interfere with the interests of the public. What-  
 372 ever restraint is larger than the necessary protection of the party requires can be of no benefit to either; it can only be oppressive, it is in the eye of the law unreasonable. What-  
 ever is injurious to the interests of the public is void on the ground of public policy." This very statement of the rule implies that the contract must be one in which there is a main purpose, to which the covenant in restraint of trade is merely ancillary. The covenant is inserted only to protect one of the parties from the injury which in the execution of the contract or enjoyment of its fruits he may suffer from the unrestrained competition of the other. The main purpose of the contract suggests the measure of protection needed and furnishes a sufficiently uniform standard by which the validity of such restraints may be judicially determined. In such a case if the restraint exceeds the necessity presented by the main purpose of the contract it is void for two reasons: first, because it oppresses the covenantor without any corresponding benefit to the covenantee, and, second, because it tends to a monopoly. But where the sole object of both parties in making the contract as expressed therein, is merely to restrain competition and enhance or maintain prices, it would seem that there was nothing to justify or excuse the restraint, that it would necessarily have a tendency to monopoly and therefore would be void. In such a case there is no measure of what is necessary to the protection of either party except the vague and varying opinion of judges as to how much, on principles of political economy, men ought to be allowed to restrain competition. There is in such contracts no main lawful purpose, to subserve which, partial restraint is permitted and by which its reasonableness is measured, but the sole object is to restrain trade in order to avoid the competition which it has always been the policy of the common law to foster.

Much has been said in regard to the relaxing of the original strictness of the common law in declaring contracts in restraint or trade void as conditions of civilization and public policy have changed, and the argument drawn therefrom is that the law now recognizes that competition may be so ruinous as to injure the public and, therefore, that contracts made with a view to check such ruinous competition and regulate prices, though in restraint of trade and having no other purpose, will be upheld. We think this conclusion is unwarranted by the authorities when all of them are considered. It is true that certain rules for determining whether a covenant in restraint of trade ancillary to the main purpose of a contract was reasonably adapted and limited to the necessary protection of a party in the carrying out of such purpose have been somewhat modified by modern authorities. In *Mitchell v. Reynolds*, 1 P. Wms., 181, the leading early case on the subject in which the main object of the contract was the sale of a bake-house, and there was a covenant to protect the purchaser against competition by the seller in the bakery business. Chief Justice Parker laid down the rule that, it must appear before such a covenant could be enforced, that the restraint was not general but particular or partial as to places or persons, and was upon a good and adequate consideration so as to make it a proper and useful contract. Subsequently it was decided in *Hitchcock v. Coke*, 6 Ad. & El., 454, that the adequacy of the consideration was not to be inquired into by the court if it was a legal one and that the operation of the covenant need not be limited in time. More recently the limitation that the restraint could not be general or unlimited as to space has been modified in some cases by holding that if the protection necessary to the covenantee reasonably requires a covenant unrestricted as to space, it will be upheld as valid. *Whittaker v. Howe*, 3 Beav., 383; *Leather Cloth Co. v. Lonsont*, L. R. 9 Eq. Cases, 345; *Rousillon v. Rousillon*, 14 Ch. Div., 351; *Nordenfeldt v. Maxim Nordenfeldt Co.*, Appeal Cases (1894), 535; see also *Fowle v. Park*, 131 U. S., 88; *Diamond Match Co. v. Roeber*, 106 N. Y., 473. But these cases all involved contracts in which the covenant in restraint of trade was ancillary to the main and lawful purpose of the contract and was necessary to the protection of the covenantee in the carrying out of that main purpose. They do not manifest any general disposition on the part of the courts to be more liberal in supporting contracts having for their sole object the restraint of trade, than did the courts of an earlier time. It is true that there are some cases in which the courts mistaking, as we conceive, the proper limits of the relaxation of the rules for determining the unreasonableness of restraints of trade have set sail on a sea of doubt and have assumed the power to say in respect to contracts which have no other purpose and no other consideration on either side than the mutual restraint of the parties, how much restraint of competition is in the public interest and how much is not. The manifest danger in the administration of justice according to so shifting, vague and indeterminate standard would seem to be a strong reason against adopting it. The cases assuming such a power in the courts are *Wickens v. Evans*, 3

Young & Jervis, 318; *Collins v. Locke*, 4 Appeal Cases, 674; *Ontario Salt Co. v. The Merchants' Salt Company*, 18 Grant's (Up. Can.), 540; *Kellogg v. Larkin*, 3 Pinney, 123; *Lestie v. Lorillard*, 110 N. Y., 519.

In *Wickens v. Evans*, three trunk manufacturers of England who had competed with each other throughout the realm to their loss, agreed to divide England into three districts, each party to have one district exclusively for his trade, and if any stranger should invade the district of either as a competitor, they agreed "to meet to devise means to promote their own views." The restraint was held

374 partial and reasonable because it left the trade open to any third party in either district. In answer to the suggestion that such an agreement to divide up the beer business of London among the London brewers would lead to the abuses of monopoly, it was replied that outside competition would soon cure such abuses, an answer that would validate the most complete local monopoly of the present day. It may be, as suggested by the court, that local monopolies cannot endure long because their very existence tempts outside capital into competition, but the public policy embodied in the common law requires the discouragement of monopolies, however temporary their existence may be. The public interest may suffer severely while new competition is slowly developing. The case can hardly be reconciled with later cases, hereafter to be referred to in England and America. It is true that there was in this case no direct evidence of a desire by the parties to regulate prices, and it has been sometimes explained on the theory that the agreement was solely to reduce the expenses incident to a business covering the realm by restricting its territorial extent; but it is difficult to escape the conclusion that the restraint upon each two of the three parties was imposed to secure to the other a monopoly and power to control prices in the territory assigned to him, because the final clause in the contract implies that when it was executed there were no other competitors except the parties in the territory divided.

*Collins v. Locke* was a case in the privy council. The action was brought to enforce certain articles of agreement by and between four of the leading master stevedore contracting firms in Melbourne, Australia, who did practically all the business at that port. The court (composed of Sir Barnes Peacock, Sir Montague E. Smith and Sir Robert P. Collier), describes the scope and purposes of the agreement and the view of the court as follows: "The objects which this agreement has in view are to parcel out the stevedoring business of the port among the parties to it and so to prevent competition, at least among themselves, and also it may be to keep up the price to be paid for the work. Their lordships are not prepared to say that an agreement having these objects is invalid if carried into effect by proper means, that is by provisions reasonably necessary for the purpose, though the effect of them might be to create a partial restraint upon the power of the parties to exercise their trade." No attempt is made to justify the view thus comprehensively stated or to support it by authority, or to reconcile it with the general doctrine of the common law that contracts restraining competition,

raising prices and tending to a monopoly as this is conceded by the court to have been void. The court ignores the public interest that prices shall be regulated by competition and assumes the power in the court to uphold and enforce a contract securing a monopoly if it affect only one port so as to be but a partial restraint of trade.

The case is directly at variance with the decision of the  
375 supreme court of Illinois in *More v. Bennett*, 141 Ill., 69, hereafter discussed and cannot be reconciled in principle with many of the other cases cited.

The Canadian case of the *Ontario Salt Co. v. The Merchants' Salt Co.*, is another one upon which counsel for the defendants rely. That was the decision of a vice-chancellor. Six salt companies, in order to maintain prices, combined and put their business under the control of a committee and agreed not to sell except through the committee. It was held that because it appeared that there were other salt companies in the province and because the combiners denied that they intended to raise prices, but only to maintain them, the contract of union was not in unlawful restraint of trade. The conclusion and argument of the court in *Salt Co. v. Guthrie*, 35 O. S., hereafter stated would seem to be a sufficient answer to this case.

*Kellogg v. Larkin*, 3 Pinney, 123, was an early case in Wisconsin in which the action was on the covenant of a warehouseman in a lease of his warehouse, by which he agreed to devote his services to the lessee at certain compensation and not to purchase or store wheat in the Milwaukee market. The covenant was held valid. Had nothing else appeared in the case the conclusion would have been clearly right because such a covenant might well have been reasonably necessary to the protection of the lessee in his enjoyment of the warehouse and the good will of the lessor. But it further appeared that this lease with the covenant was only one of many such executed by the warehousemen of Milwaukee to the united grain dealers of that city to enable the latter to obtain absolute control of the wheat market in Milwaukee. The court held the latter combination valid also. The decision cannot be upheld in view of the more modern authorities hereafter referred to.

The case of *Leslie v. Lorillard*, 110 N. Y., 519, would seem to be an authority against our view. In that case a stockholder sought to restrain the payment of an annual payment about to be made by the Old Dominion Steamship Company under a contract by which it bought off the Lorillard Steamship Company from continuing in competition with it in carrying passengers and freight between New York and Norfolk. The contract was held valid although it had no purpose except the restraining of competition and so far as appears the obtaining of the complete control of the business. The case is rested on *Diamond Match Company v. Roeber*, 106 N. Y., 473, which was a case of the purchase of property and good will. It proceeds on the general proposition "that competition is not invariably a public benefaction; for it may be carried on to such a degree as to become a general evil," and thus leaves it to the discretion of the court to say how much competition is desirable and how much is mischievous, and accordingly to determine whether a contract is

bad or not. The case is directly opposed to *Anderson v. Jett*, 89 Ky., 375, hereafter cited. It should be said that nothing appears  
 376 in the report of the case to show directly that the purpose of the contract was to reserve the entire business to the Dominion Company or to secure to it the power of regulating prices, but this natural inference from the terms of the contract is not negatived.

The case of *Mogul Steamship Company v. McGregor, Gow & Co.*, Appeal Cases (1892), 25, has been cited to sustain the position of the defendants. It does not do so. It was a suit for damages brought by a company engaged in the tea-carrying trade at Hankow, China, against six other companies engaged in the same trade, for loss inflicted by an alleged unlawful conspiracy entered into by them to drive the plaintiff out of the trade and to obtain control of the trade themselves. It appeared that the defendants agreed to conform to a plan of association, by which they should constantly underbid the plaintiff, and take away his trade by offering exceptional and very favorable terms to customers dealing exclusively with the members of the association; and that they did this to control the business the next season after he had been thus driven out of competition. It was held by the House of Lords that this was not an unlawful and indictable conspiracy giving rise to a cause of action by the person injured thereby; but it was not held that the contract of association entered into by the defendants was not void and unenforceable at common law. On the contrary, Lord Brainwell, in his judgment (at page 46), and Lord Hannen, in his, (at page 58), distinctly say that the contract of association was void as in restraint of trade, but all the law lords were of opinion that contracts void as in restraint of trade were not unlawful in a criminal sense, and gave no right of action for damages to one injured thereby. The statute we are considering expressly gives such contracts a criminal and unlawful character. It is manifest, therefore, that whatever of relevancy the *Mogul Steamship Company* case has in this discussion, makes for, rather than against, our conclusion.

Two other cases deserve mention here. They are *The Central Shade Roller Co. v. Cushman*, 143 Mass., 353, and *Gloucester Isinglass & Glue Company v. Russian Cement Co.*, 154 Mass., 92. In these cases it was held that contracts in restraint of trade are not invalid if they affect trade in articles which, though useful and convenient, are not articles of prime or public necessity, and therefore contracts between dealers made to secure complete control of the manufacture and sale of such articles were supported. In the first case, the article involved was a fastening of a certain shade roller and in the other was glue made from fish skins. We think the cases hereafter cited show that the common-law rule against restraint of trade extends to all articles of merchandise and that the introduction of such a distinction only furnishes another opportunity for courts to give effect to the varying economical opinions of its individual members. It might be difficult to say why it was any more important to prevent restraints of trade in beer, mineral water,  
 377 leather cloth and wire cloth than of trade in curtain shades or glue. However this may be, the cases do not touch the



case at bar, because the same court in *Gamewell Fire Alarm Tel. Co. v. Crane*, 160 Mass., 50, held that fire-alarm telegraph instruments were articles of sufficient public necessity to render unreasonable restraints of trade in them void, and certainly such articles are not more necessary for public use than water, gas and sewer pipe.

There are other cases upon which counsel of defendants rely which in our judgment have no bearing on the issue, or if they have, are clearly within the rules we have already stated. One is a case in which a railroad company made a contract with a sleeping car company by which the latter agreed to do the sleeping-car business of the railway company on a number of conditions, one of which was that no other company should be allowed to engage in the sleeping-car business on the same line. *Chicago, etc., Railroad Co. v. Pullman Southern Car Company*, 139 U. S., 79. The main purpose of such a contract is to furnish sleeping car facilities to the public. The railroad company may discharge this duty itself to the public and allow no one else to do it, or it may hire some one to do it and to secure the necessary investment of capital in the discharge of the duty may secure to the sleeping car company the same freedom from competition that it would have itself in discharging the duty. The restraint upon itself is properly proportioned to and is only ancillary to the main purpose of the contract which is to secure proper facilities to the public. Exactly the same principle applies to similarly exclusive contracts with express companies, and stock-yard delivery companies. The *Express Cases*, 117 U. S., 1; *Covington Stockyards Co. v. Keith*, 139 U. S., 128; *Butchers' & Drovers' Stockyards Co. v. Louisville & Nashville R. R. Co.*, 31 U. S. Ap., 252. The fact is that it is quite difficult to conceive how competition would be possible upon the same line of railway between sleeping car companies, or express companies. Such contracts involve the hauling of sleeping cars, or express cars on each express train, the assignment of offices in each station, and various running arrangements which it would be an intolerable burden upon the railroad company to make and execute for two companies at the same time. And the same is true of contracts with a stock delivery company. The railway company could not ordinarily be expected to have more than one general station for the delivery of cattle in any one town; it would only be required by the nature of its employment to furnish such facilities as were reasonably sufficient for the business at that place. There is hardly more objection on the ground of public policy to such a restriction upon a railway company in cases like these than there would be to a restriction upon a lessor not to allow the subject-matter of the lease to be enjoyed by any one but the lessee during the lease. The privilege when granted is hardly capable of other than exclusive enjoyment. The public interest is satisfactorily secured by the requirement which may be enforced by any member of the public, to wit, that the charges allowed shall not be unreasonable, and the business is of such a public character that it is entirely subject to legislative regulation in the same interest.

Having considered the cases upon which the counsel for the de-



endants have relied to maintain the proposition that contracts having no purpose but to restrain competition and maintain prices, if reasonable, will be held valid, we must now pass in rapid review the cases that make for an opposite view.

In *People v. Sheldon*, 139 N. Y., 251, all the coal dealers in the city of Lockport, N. Y., entered into a contract of association, forming a coal exchange to prevent competition by constituting the exchange the sole authority to fix the price to be charged by members for coal sold by them, and the price was thus fixed. The court approved a charge to the jury that even if this was merely a combination between independent coal dealers to prevent competition between themselves for the due protection of the parties to it against ruinous rivalry and although no attempt was made to charge unreasonable or excessive prices, it was inimical to trade and commerce, whatever might be done under it, and was within the State statute making a conspiracy injurious to trade indictable. Said Andrews, C. J. (264): "If agreements and combinations to prevent competition in prices are or may be hurtful to trade, the only sure remedy is to prohibit all agreements of that character. If the validity of such an agreement was made to depend upon actual proof of public prejudice or injury, it would be very difficult in any case to establish the invalidity, although the moral evidence might be very convincing. See to the same effect *Judd v. Harrington*, 139 N. Y., 105; *Leonard v. Poole*, 114 N. Y., 371; *The De Witt Wire Cloth Company v. The New Jersey Wire Cloth Company*, 16 Daly, 529.

In *Morris Run Coal Co. v. Barclay Coal Co.*, 68 Pa. St., 173, five coal companies controlling the bituminous coal trade in northern Pennsylvania agreed to allow a committee to fix prices and rates of freight and to fix proportion of sales by each. Competition was not destroyed because the anthracite coal and Cumberland bituminous coal were sold in competition with this coal. The association, was, nevertheless, held void as in illegal restraint of trade and competition and tending to injure the public. In *Nester v. Brewing Co.*, 161 Pa. St., 473, forty-five brewers in Philadelphia made an agreement to sell beer in Philadelphia and Camden at a certain price to be fixed by a committee of their number. Though beer could hardly be said to be an article of prime necessity like coal, yet as it was an article of merchandise, the contract was held void as in restraint of trade and tending to a monopoly.

In *Salt Company v. Guthrie*, 35 O. S., 666, the salt manufacturers of a salt-producing territory in Ohio, with some exceptions, 379 combined to regulate the price of salt by preventing ruinous competition between themselves and agreed to sell only at prices fixed by a committee of their number. The supreme court of Ohio held the contract void. Judge McIlvaine, who delivered the opinion of the court, said: "The clear tendency of such an agreement is to establish a monopoly and to destroy competition in trade and for that reason on the ground of public policy courts will not aid in its enforcement. It is no answer to say that competition in the salt trade was not in fact destroyed or that the price of the commodity was not unreasonably advanced. Courts will not stop

to inquire as to the degree of injury inflicted upon the public; it is enough to know that the inevitable tendency of such contracts is injurious to the public." Other Ohio cases which presented similar facts and in which the same rule was enforced are *Emery v. Candle Co.*, 47 O. S., 320, and *Hoffman v. Brooks*, 11 Weekly Law Bulletin, 258.

In *Anderson v. Jett*, 89 Kentucky, 375, two owners of steamboats running on the Kentucky river made an agreement to keep up rates and divide net profits to prevent ruinous competition and reduced rates. The contract was held void.

In *Chapin v. Brown*, 83 Iowa, 156, the grocerymen in a town in order to avoid a trade in butter which was burdensome, agreed not to buy any butter or to take it in trade except for use in their own families, so as to throw the business into the hands of one man who dealt in butter exclusively. The agreement was held invalid because in restraint of trade and tending to create a monopoly.

In *Craft v. McConoughy*, 79 Ill., 346, five grain dealers in Rochelle, Ill., agreed to conduct their business as if independent of each other, but secretly to fix prices at which they would sell grain and to divide profits in a certain proportion. This was held void as in restraint of trade and tending to create a monopoly. In *Moore v. Bennett*, 140 Ill., 69, articles of association entered into by only a part of the stenographers of Chicago to fix a schedule of prices and prevent competition among their members and a consequent reduction of prices, was held void. The court said: "A combination among a number of persons engaged in a particular business to stifle or prevent competition and thereby to enhance or diminish prices to a point above or below what they would be, if left to the influence of unrestricted competition, is contrary to public policy. Contracts in partial restraint of trade which the law sustains are those entered into by a vendor of a business and its good will with its vendee by which the vendor agrees not to engage in the same business within a limited territory and the restraint, to be valid, must be no more extensive than is reasonably necessary for the protection of the vendee in the enjoyment of the business purchased." As already said this case is in direct conflict with *Collins v. Locke*, 4 Appeal Cases, 674, discussed above. To the same effect as 380 *More v. Bennett* are *Ford v. Milkshippers' Association*, 155 Ill., 166, and *Bishop v. American Preservers' Co.*, 157 Ills., 284.

In *Milwaukee Masons' & Builders' Association v. Niezerowski*, 95 Wis., 129, the suit was on a note given in pursuance of the secret rules of an association of sixty out of the seventy-five master masons in Milwaukee, by which all bids for work about to be let were first made to the association and the lowest bidder was then required to add 6 per cent. to his bid, and if the bid was more than 8 per cent. below the next lowest bidder, more than 6 per cent. might be added. Each member was required to pay to the association 6 per cent. of his estimates when due, for subsequent distribution. In declaring the contract void, the court said: "The combination in question is contrary to public policy and strikes at the interests of those of the public desiring to build and between whom and

the association or the members thereof there exist no contract relations."

In *Vulcan Powder Co. v. Powder Co.*, 96 Cal., 510, four powder companies of California agreed that each should sell at a price to be fixed by a committee of their representatives and should pay over to the others the profits on any excess of sales over a fixed proportion of the total sales. The contract was held void.

In *Texas Oil Co. v. Adoue*, 83 Texas, 650, five owners of cotton-seed oil mills in Texas made an agreement not to sell at less than certain agreed prices. One guaranteed profits to the four others, and suit was brought on the guaranty. It was held void as restraining trade and tending to a monopoly even though the evidence failed to establish that it effected a monopoly.

In *India Bagging Association v. Kirk & Co.*, 14 La. Ann., 168, eight commercial firms in New Orleans holding a large quantity of cotton bagging, entered into an agreement by which they stipulated that for three months no member should sell a bale except by a vote of the majority. It was held that the contract was "palpably and unequivocally a combination in restraint of trade and to enhance the price in the market of an article of primary necessity to cotton planters. Such combinations are contrary to public order and cannot be enforced in a court of justice."

In *Hilton v. Eckerstey*, 6 E. & B., 47, it was held that an agreement between eighteen cotton manufacturers to submit to the control of a committee of their number for twelve months the question as to prices to be paid for labor and the terms of employment, in order to resist the aggressions of an association of workmen, was void and unenforceable, because in restraint of trade. In *Urmston v. Whitelegg Brothers*, 63 Law Times (N. S.), 455, a case in the Queen's Bench division before Day & Lawrence, JJ., the action was brought to enforce a penalty under the rules of the Bolton Mineral Water Manufacturers' Association, which recited that the object of the association was to maintain the price of mineral water and

381 bound the members for ten years not to sell at less than 9d. a dozen bottles or at not less than any higher price fixed by the committee, on penalty of ten pounds for each violation. Day, justice, said: "If a contract for raising prices against the public interest is a contract in restraint of trade, this is undoubtedly such a contract. During the last hundred years great changes have taken place in the views of the public, of the legislature, and therefore, of the judges on the matter and many old-fashioned offenses has disappeared; but the rule still obtains that combinations for the mere purpose of raising prices is not enforceable in a court of law. This contract is illegal in the sense of not being enforceable; it is not necessary that it should be such as to form the ground of criminal proceedings."

In the foregoing cases the only consideration of the agreement restraining the trade of one party was the agreement of the other to the same effect and there was no relation of partnership or of vendor and vendee, or of employer and employé. Where such relation exists between the parties, as already stated restraints are

usually enforceable if commensurate only with the reasonable protection of the covenantee in respect to the main transactions affected by the contract. But in recent years, even the fact that the contract is one for the sale of property or of business and good will or for the making of a partnership or a corporation has not saved it from invalidity if it could be shown that it was only part of a plan to acquire all the property used in a business by one management with a view to establishing a monopoly. Such cases go a step farther than those already considered. In them, the actual intent to monopolize must appear. It is not deemed enough that the mere tendency of the provisions of the contract should be to restrain competition. In such cases the restraint of competition ceases to be ancillary and becomes the main purpose of the contract and the transfer of property and good will or the partnership agreement is merely ancillary and subordinate to that purpose. The principal cases of this class are *Richardson v. Buhl*, 77 Mich., 632; *Arnot v. Pittston Coal Company*, 68 N. Y., 558; *People v. Milk Exchange*, 145 N. Y., 267; *People v. New York Sugar Refining Co.*, 54 Hun., 366; *State v. Nebraska Distilling Co.*, 29 Neb., 70; *State v. Standard Oil Co.*, 49 O. S., 137; *American Biscuit & Mfg. Co. v. Klotz*, 44 Fed. Rep., 721; *The Distilling & Cattle Feeding Co. v. People*, 156 Ill., 448; *Pittsburg Carbon Co. v. McMillan*, 119 N. Y., 46; *National Harrow Co. v. Hench*, 83 Fed. Rep., 36; *Pacific Factor Co. v. Adler*, 90 Cal., 110; *Santa Clara Co. v. Hayes*, 76 Cal., 387.

In addition to the cases cited, there are others which sustain the general principle, but in them there existed the additional reason for holding the contracts invalid, that the parties were engaged in a quasi-public employment. They are *Gibbs v. The Baltimore Gas Co.*, 130 U. S., 396; *People v. Chicago Gas Trust Co.*, 130 Ill., 268; *Stockton v. Central R. R. Co.*, 50 N. J., Eq., 52, and *Transportation Company v. Pipe Line Co.*, 22 W. Va., 600; *Hooker v. Vandewater*, 4 Denio, 349; *Stanton v. Allen*, 5 Denio, 434; *Central R. R. Co. v. Collins*, 40 Ga., 582; *Hazlehurst v. Savannah*, 43 Ga., 1.

Upon this review of the law and the authorities, we can have no doubt that the association of the defendants, however reasonable the prices they fixed, however great the competition they had to encounter, and however great the necessity for curbing themselves by joint agreement from committing financial suicide by ill-advised competition, was void at common law, because in restraint of trade and tending to a monopoly. But the facts of the case do not require us to go so far as this, for they show that the attempted justification of this association on the grounds stated is without foundation.

The defendants being manufacturers and vendors of cast-iron pipe entered into a combination to raise the prices for pipe for all the States west and south of New York, Pennsylvania and Virginia, constituting considerably more than three-quarters of the territory of the United States and significantly called by the associates "pay" territory. Their joint annual output was 220,000 tons. The total capacity of all the other cast-iron pipe manufacturers in the "pay" territory was 170,500 tons. Of this, 45,000 tons was the capacity of

mills in Texas, Colorado and Oregon, so far removed from that part of the "pay" territory where the demand was considerable that necessary freight rates excluded them from the possibility of competing, and 12,000 tons was the possible annual capacity of a mill at St. Louis, which was practically under the same management as that of one of the defendants' mills. Of the remainder of the mills in "pay" territory and outside of the combination, one was at Columbus, Ohio, two in northern Ohio, and one in Michigan. Their aggregate possible annual capacity was about one-half the usual annual output of the defendants' mills. They were, it will be observed, at the extreme northern end of the "pay" territory, while the defendants' mills at Cincinnati, Louisville, Chattanooga and south Pittsburg, and Anniston and Bessemer were grouped much nearer to the center of the "pay" territory. The freight upon cast-iron pipe amounts to a considerable percentage of the price at which manufacturers can deliver it at any great distance from the place of manufacture. Within the margin of the freight per ton which eastern manufacturers would have — pay to deliver pipe in "pay" territory, the defendants, by controlling two-thirds of the output in "pay" territory, were practically able to fix prices. The competition of the Ohio and Michigan mills of course somewhat affected their power in this respect in the northern part of the "pay" territory, but the further south the place of delivery was to be,

the more complete the monopoly over the trade which the  
383 defendants were able to exercise, within the limit already described. Much evidence is adduced upon affidavit to prove that defendants had no power arbitrarily to fix prices and that they were always obliged to meet competition. To the extent that they could not impose prices on the public in excess of the cost price of pipe with freight from the Atlantic seaboard added, this is true, but within that limit they could fix prices as they chose. The most cogent evidence that they had this power is the fact everywhere apparent in the record that they exercised it. The details of the way in which it was maintained are somewhat obscured by the manner in which the proof was adduced in the court below upon affidavits solely and without the clarifying effect of cross-examination, but quite enough appears to leave no doubt of the ultimate fact.

The defendants were by their combination therefore able to deprive the public in a large territory of the advantages otherwise accruing to them from the proximity of defendants' pipe factories and, by keeping prices just low enough to prevent competition by eastern manufacturers, to compel the public to pay an increase over what the price would have been if fixed by competition between defendants, nearly equal to the advantage in freight rates enjoyed by defendants over eastern competitors. The defendants acquired this power by voluntarily agreeing to sell only at prices fixed by their committee and by allowing the highest bidder at the secret "auction pool" to become the lowest bidder of them at the public letting. Now, the restraint thus imposed on themselves was only partial. It did not cover the United States. There was not a complete monopoly. It was tempered by the fear of competition and



it affected only a part of the price. But this certainly does not take the contract of association out of the annulling effect of the rule against monopolies. In *United States v. E. C. Knight Company*, 156 U. S., 1, 16, Chief Justice Fuller, in speaking for the court said: "Again all the authorities agree that in order to vitiate a contract or combination, it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

It has been earnestly pressed upon us that the prices at which the cast-iron pipe was sold in "pay" territory were reasonable. A great many affidavits of purchasers of pipe in "pay" territory, all drawn by the same hand or from the same model, are produced in which the affiants say that in their opinion the prices at which pipe has been sold by defendants have been reasonable. We do not think the issue an important one, because, as already stated, we do not think that at common law there is any question of reasonableness open to the courts with reference to such a contract. Its tendency was certainly to give defendants the power to charge unreasonable prices, had they chosen to do so. But if it were important

we should unhesitatingly find that the prices charged in the 384 instances which were in evidence were unreasonable. The letters from the manager of the Chattanooga foundry written to the other defendants and discussing the prices fixed by the association, do not leave the slightest doubt upon this point, and outweigh the perfunctory affidavits produced by the defendants. The cost of producing pipe at Chattanooga, together with a reasonable profit, did not exceed \$15 a ton. It could have been delivered at Atlanta at \$17 to \$18 a ton, and yet the lowest price which that foundry was permitted by the rules of the association to bid was \$24.25. The same thing was true all through "pay" territory to a greater or less degree and especially at "reserved" cities.

Another aspect of this contract of association brings it within the term used in the statute, "a conspiracy in restraint of trade." A conspiracy is a combination of two or more persons to accomplish an unlawful end by lawful means or a lawful end by unlawful means. In the answer of the defendants, it is averred that the chief way in which cast iron pipe is sold is by contracts let after competitive bidding invited by the intending purchaser. It would have much interfered with the smooth working of defendants' association, had its existence and purposes become known to the public. A part of the plan was a deliberate attempt to create in the minds of the members of the public inviting bids the belief that competition existed between the defendants. Several of the defendants were required to bid at every letting and to make their bids at such prices that the one already selected to obtain the contract should have the lowest bid. It is well settled that an agreement between intending bidders at a public auction or a public letting not to bid against each other and thus to prevent competition is a fraud upon the intending vendor or contractor, and the ensuing sale or contract will be set aside. *Breslin v. Brown*, 24 O. S., 565; *Atcheson v. Mallon*,



43 N. Y., 147; *Loyd v. Malone*, 23 Ill., 41; *Wooton v. Hinkle*, 20 Mo., 290; *Phippen v. Stickney*, 3 Metc., 384; *Kearney v. Taylor*, 15 How., 494, 519; *Wilbur v. How*, 8 Johns, 443; *Hannah v. Fife*, 27 Mich., 172; *Gibbs v. Smith*, 115 Mass., 592; *Swan v. Chorpenning*, 20 Cal., 182; *Gardner v. Morse*, 25 Me., 140; *Ingram v. Ingram*, 4 Jones L., 188; *Brisbane v. Adams*, 3 N. Y., 129; *Woodruff v. Berry*, 40 Ark., 251; *Wald's Pollock on Contracts*, 310, note by Mr. Wald, and cases cited. The case of *Jones v. North*, L. R. 19 Eq., 426, to the contrary cannot be supported. The largest purchasers of pipe are municipal corporations and they are by law required to solicit bids for the sale of pipe in order that the public may get the benefit of competition. One of the means adopted by the defendants in their plan of combination was this illegal and fraudulent effort to evade such laws and to deceive intending purchasers. No matter what the excuse for the combination by defendants in restraint of trade, the illegality of the means stamps it as a conspiracy and so brings it within that term of the Federal statute.

385 The second question is whether the trade restrained by the combination of the defendants was interstate trade. The mills of the defendants were situated, two in Alabama, two in Tennessee, one in Kentucky, and one in Ohio. The invariable custom in sales of pipe required the seller to deliver the pipe at the place where it was to be used by the buyer and to include in the price the cost of delivery. The contracts, as the answer of the defendants aver, were invariably made after public letting at the home and in the State of the buyer. The "pay" territory, sales in which it was the professed object of the defendants to regulate by their contract of association, included thirty-six States. The cities which were especially "reserved" for the benefit of the defendants were Atlanta and Anniston, "reserved" to the Anniston mill in Alabama, New Orleans and Chattanooga, "reserved" to the Chattanooga mill in Tennessee, St. Louis and Birmingham, "reserved" to Bessemer mill in Alabama, Omaha, "reserved" to the South Pittsburg mill in Tennessee, Louisville, New Albany and Jeffersonville, "reserved" to Dennis Long & Co., of Louisville, and Cincinnati, Newport and Covington, "reserved" to the Addyston mill in Ohio. Under the agreement every request for bids from any place, except the "reserved" cities, sent to any one of the defendants was submitted to the central committee, who fixed a price and the contract was awarded to that member, who would agree to pay for the benefit of the other members of the association the largest "bonus." In the case of the "reserved" cities, the successful bidder having been already fixed, the association determined the price and bonus to be paid. The contract of association restrained every defendant except the one selected to receive the contract from soliciting (in good faith) or making, a contract for pipe with the intending purchaser at all, and restrained the defendant so selected from making the contract except at the price fixed by the committee. In cases of pipe to be purchased in any State of the thirty-six in "pay" territory, except four, each one of the defendants, by his contract of association, restrained his freedom of trade in respect to making a contract in

that State for the sale of pipe to be delivered across State lines, five of them agreeing not to make such a contract at all, and the sixth agreeing not to make the contract below a fixed price. With respect to sales in Ohio, Kentucky, Tennessee and Alabama, the effect of the contract of association was to bind at least three, sometimes four and sometimes five of the defendants not to make a contract at all in those States for the sale and delivery of pipe from another State, and if the job were assigned as it might be to one living in a different State from the place of the contract and delivery, its effect would be to bind him not to sell and deliver pipe across State lines at less than a certain price. It thus appears that no sale or proposed sale can be suggested within the scope of the contract of association with respect to which that contract did not

restrain at least three, often four, more often five and usually

386 all of the defendants in the exercise of the freedom, which, but for the contract would have been theirs, of selling in one State pipe to be delivered from another State at any price they might see fit to fix.

Can there be any doubt that this was a restraint of interstate trade and commerce? Mr. Justice Field, in the *County of Mobile v. Kimball*, 102 U. S., 691, 696, said: "Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities." In *Robbins v. Shelby Taxing District*, 120 U. S., 489, a law of Tennessee, which imposed a tax on all "drummers" who solicited orders on samples was held unconstitutional in so far as it applied to the drummer of an Ohio firm, who was soliciting orders for goods to be sent from Ohio to purchasers in Tennessee, on the ground that it was a tax on interstate commerce. In delivering the opinion of the court in that case, Mr. Justice Bradley said (p. 497), that a tax on the sale of goods or the offer to sell them before they are brought into the State, was clearly a tax on interstate commerce. He further said: "The negotiation of sales of goods which are in another State for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce." The principle thus announced has been reaffirmed by the court in *Corson v. Maryland*, 120 U. S., 502; in *Asher v. Texas*, 128 U. S., 129; in *Stoutenburgh v. Hennick*, 129 U. S., 141, and in *Brennan v. Titusville*, 153 U. S., 289. The point of these cases was emphasized by the distinction taken in *Emert v. Missouri*, 156 U. S., 296, in which the validity of a law of Missouri, imposing a tax on peddlers, was in question. The plaintiff in error, convicted under the law of failure to pay the tax, was the selling agent of a New Jersey sewing-machine manufacturing company, who carried the machine for sale with him in his wagon. It was held, that in such a case the machine having become part of the mass of property in the State, the tax on the peddler was not a tax on interstate commerce. If, then, the soliciting of orders for, and the sale of goods in one State to be delivered from another State, is interstate commerce in its strictest and highest sense, such that the States are excluded by the Federal Constitution from a

right to regulate or tax the same, it seems clear that contracts in restraint of such solicitations, negotiations and sales are contracts in restraint of interstate commerce. The anti-trust law is an effort by Congress to regulate interstate commerce. Such commerce as the States are excluded from burdening or regulating in any way by tax or otherwise, because of the power of Congress to regulate interstate commerce, must of necessity be the commerce which Congress may regulate and which by the terms of the anti-trust law it has regulated. We can see no escape from the conclusion, therefore, that the contract of the defendants was in restraint of interstate commerce.

The learned judge who dismissed the bill at the circuit, was of opinion that the contract of association only indirectly affected interstate commerce and relied chiefly for this conclusion on the decision of the Supreme Court in the case of *United States v. E. C. Knight Co.*, 156 U. S., 1. In that case the bill filed under the anti-trust law sought to enjoin the defendants from continuing a union of substantially all the sugar refineries of the country for the refining of raw sugars. The Supreme Court held that the monopoly thus effected was not within the law, because the contract or agreement of union related only to the manufacture of refined sugar and not to its sale throughout the country, that manufacture preceded commerce, and although the manufacture under a monopoly might, and doubtless would, indirectly, affect both internal and interstate commerce, it was not within the power of Congress to regulate manufactures within a State on that ground. The case arose on a bill in equity filed by the United States under the anti-trust act, praying for relief in respect of certain agreements under which the American Sugar Refining Company had purchased the stock of four Philadelphia sugar refining companies with shares of its own stock, whereby the American Company acquired nearly complete control of the manufacture of refined sugar in this country. The relief sought was the cancellation of the agreements of purchase, the redelivery of the stock to the parties respectively, and an injunction against the further performance of the agreements and further violations of the act.

The Chief Justice, in delivering the judgment of the court, said: "The argument is that the power to control the manufacture of refined sugar is a monopoly over a necessity of life to the enjoyment of which by a large part of the population of the United States, interstate commerce is indispensable and that therefore, the General Government in the exercise of the power to regulate commerce, may repress such monopoly directly, and set aside the instruments which have created it. \* \* \* Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and it affects it only incidentally and indirectly. Commerce succeeds to manufacture and is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be gov-

erned and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed or whenever the transaction is itself a monopoly of commerce. \* \* \* The regulation of commerce applies to the subjects of commerce and not to matters of internal police.

388 *Contracts to buy, sell or exchange goods to be transported among the several States, the transportation and its instrumentalities and articles bought, sold or exchanged for the purpose of such transit among the States or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce."* The chief justice then refers to the prior case of *Coe v. Errol*, 116 U. S., 517, in which it was held that logs were not made subjects of interstate commerce by the mere intent of the owner to ship them into another State, so that State taxation upon them could be regarded as a burden upon interstate commerce, until that intent had been carried so far into execution that "they had commenced their final movement from the State of their origin to that of their destination." *Kidd v. Pearson*, 128 U. S., 1, is also referred to. In that case it was held that a law of Iowa, which forbade the manufacture of spirituous liquor except for certain purposes was not in conflict with the commerce clause of the Federal Constitution, although it appeared by proof that the liquor was to be manufactured only with intent to ship the same out of the State. The chief justice further said: "It was in the light of well-settled principles that the act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the States or the citizens of the States in the acquisition, control or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts and conspiracies to monopolize trade and commerce among the several States or with foreign nations; but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the States or with foreign nations. The object was manifestly private gain in the manufacture of the commodity, but not through the control of interstate or foreign commerce. \* \* \* There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly 389 affected was not enough to entitle complainants to a decree." We have thus considered and quoted from the decision in the

Knight case at length, because it was made the principal ground for the action of the court below, and is made the chief basis of the argument on behalf of the defendants here. It seems to us clear that from the beginning to the end of the opinion, the chief justice draws the distinction between a restraint upon the business of manufacturing and a restraint upon the trade or commerce between the States in the articles after manufacture, with the manifest purpose of showing that the regulating power of Congress under the Constitution could affect only the latter while the former was not under Federal control and rested wholly with the States. Among the subjects of commercial regulation by Congress, he expressly mentions "contracts to buy, sell or exchange goods to be transported among the several States," and leaves it to be plainly inferred that the statute does embrace combinations and conspiracies, which have for their object to restrain, and which necessarily operate in restraint of, the freedom of such contracts.

The citation of the case of *Coe v. Errol*, was apt to show that merchandise before its shipment across State lines was not within the regulating power of Congress and *a fortiori* that its manufacture was not, while *Kidd v. Pearson*, clearly made the distinction between the absence of power in Congress to control manufacturing merely because the manufacturer intends to add to interstate commerce with the product, and the power which Congress has to prevent obstructions to interstate transportation in the product when made. But neither of these cases controls the one now under consideration. The subject-matter of the restraint here was not articles of merchandise or their manufacture, but contracts for sale of such articles to be delivered across State lines and the negotiations and bids preliminary to the making of such contracts, all of which, as we have seen, do not merely affect interstate commerce, but are interstate commerce. It can hardly be said that a combination in restraint of what is interstate commerce does not directly affect and burden that commerce. The error into which the circuit court fell, it seems to us, was in not observing the difference between the regulating power of Congress over contracts and negotiations for sales of goods to be delivered across State lines, and that over the merchandise, the subject of such sales and negotiations. The goods are not within the control of Congress until they are in actual transit from one State to another. But the negotiations and making of sales which necessarily involve in their execution the delivery of merchandise across State lines are interstate commerce and so within the regulating power of Congress even before the transit of the goods in performance of the contract has begun.

The language of the chief justice in the last passages quoted above from his opinion upon which so much reliance was placed  
390 by the circuit court and the defendants' counsel at the bar is to be interpreted by the facts of the case before the court. The statement in the opinion that Congress did not intend by the anti-trust act to limit and restrict the rights of persons and corporations in the mere acquisition, control or disposition of property or to regulate the prices at which such property should be sold, or to



make criminal the acts of persons or corporations in the acquisition and control of property which the States of their residence or creation sanctioned or permitted does not imply that Congress did not intend to strike down any combination which had for its object the restraint and attempted monopoly of trade and commerce among a given number of States in specified articles of commerce and the resulting power to regulate prices therein. The obstacle in the way of granting the relief asked in *United States v. E. C. Knight Co.*, was (to use the language of the chief justice) that "the contracts and acts of the defendant related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the States or with foreign nations." The Supreme Court distinctly adjudged that "what the law struck at was combinations, contracts and conspiracies to monopolize trade and commerce among the several States or with foreign nations." That the defendants in the present case combined and contracted with each other for the purpose of restraining trade and commerce among the States covered by their agreement, in the articles manufactured by them, is too clear to admit of dispute. In the *E. C. Knight Company* case, there was, the Supreme Court said, "nothing in the proofs to indicate any intention to put a restraint upon trade or commerce." In the present case the proofs show that no one of the companies in this pipe-trust combination was allowed to send its goods out of the State in which they were manufactured except upon the terms established by the agreement. Can it be doubted that this was a direct restraint upon interstate commerce in those goods?

To give the language of the opinion in the Knight case the construction contended for by defendants, would be to assume that the court after having in the clearest way distinguished the case it was deciding from a case like the one at bar for the very purpose of not deciding any case but the one before it, then proceeded to confuse the cases by using language which decided both. We cannot concur in such an interpretation of the opinion.

Counsel for the defendants also find in the language of Mr. Justice Peckham, in the case of the *United States v. The Freight Association*, 166 U. S., 290, 313, 326, an argument against our conclusion in this case. The question in that case was whether the anti-trust act applied to railroad companies which combined in establishing traffic rates for the transportation of persons and property. It was vigorously contended on behalf of the railroad companies that  
 391 the act was never intended to apply to them, because Congress had already provided for their regulation by the interstate-commerce law. In meeting this position, Mr. Justice Peckham used the following language (p. 313): "We have held that the trust act did not apply to a company engaged in one State in the refining of sugar under circumstances detailed in the case of *United States v. E. C. Knight Company*, 156 U. S., 1, because the refining of sugar under those circumstances bore no distinct relation to commerce between the States or with foreign nations. To exclude agreements as to rates by competing railroads for the transportation of articles



of commerce between the States would leave little for the act to take effect upon." Again, upon page 326, Justice Peckham repeats the same idea: "In the Knight Company case (*supra*) it was said that this statute applied to monopolies in restraint of interstate or international trade or commerce and not to monopolies in the manufacture even of a necessary of life. It is readily seen from these cases that if the act does not apply to the transportation of commodities by railroads from one State to another or to foreign nations, its application is so greatly limited that the whole act might as well be held inoperative."

This is not a declaration that cases might not arise within the statute which were not combinations of common carriers in relation to interstate transportation. The language used means nothing more than that if such combinations were excluded from the effect of the act, the great and manifest scope for the operation of a Federal statute on such a subject would be denied to it. To give the language more weight would be to violate the first canon for the construction of a judicial opinion laid down by Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheaton, 264, 399, 340: "It is a maxim, not to be disregarded, that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason for this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all cases is seldom completely investigated."

*In re Greene*, 52 Fed. Rep., 104, cited for the defendants, is to be distinguished from the case at bar in exactly the same way as the Knight Company case. The indictment against Greene, drawn under the anti-trust act, charged him with being a member of a combination to acquire possession and control of seventy-five per cent. of the distilleries of the country for the purpose of fixing the price of whisky and controlling the trade in it between the States. The immediate object of the combination was a monopoly in manufacture. The effect upon interstate trade in whisky was as indirect as was the monopoly of the refining of sugar in the Knight case upon interstate trade in that article.

The case of *Dueber Watch Company v. The Howard Co.*, 35 U. S. Ap., 16, cannot be regarded as an authority upon either of the questions considered in this case, because of the division of opinion among the judges. It was a suit brought by a watch manufacturing company against twenty other companies to recover damages for a boycott of the plaintiff. The averment was that the defendants had agreed not to sell any goods manufactured by them to any person dealing with the plaintiff and had caused this to be known in the trade, and that they fixed an arbitrary price for the sale of their goods to the public and because plaintiff's competition interfered with their maintaining this price, they were

using the boycott against plaintiff to stifle competition. The pleadings were not drawn with care to bring the case within the anti-trust law. The questions arose on demurrer to the bill. Judge Lacombe held that the facts stated gave rise to no cause of action; Judge Shipman held that the averments were not sufficient to show that the trade restrained was interstate, and Judge Wallace dissented on the ground that a cause of action was sufficiently stated and that the restraint was upon interstate commerce. These varying views decided the case, but they certainly furnish no precedent or authority.

There is one case which seems to be quite like the one at bar. It is the case of *United States v. Jellico Mountain Coal & Coke Co.*, 46 Fed. Rep., 432, a decision by Judge Key at the circuit. The owners of coal mines in Kentucky entered into a contract of association with coal dealers in Nashville by which they agreed that the mine-owners should only sell to dealers who were members and the members should only buy from mine-owners who were members, and that the dealers should sell at certain fixed prices, of which the mine-owners should receive a proportionate part, after payment of freight, and that prices might be raised by a vote of the association, in which case the addition to the price should be divided between the dealers and the mine-owners. The contract recited that it was intended to establish and maintain the price of coal at Nashville. It was held to be an attempt to create a monopoly in the interstate trade in coal between Kentucky and Nashville, Tenn., and it was enjoined.

It is pressed upon us that there was no intention on the part of the defendants in this case to restrain interstate commerce and in several affidavits the managing officers of the defendants make oath that they did not know what interstate commerce was, and, therefore, that they could not have combined to restrain it. Of course the defendants, like other persons subject to the law, cannot plead ignorance of it as an excuse for its violation. They knew that the combination they were making contemplated the fixing of prices for the sale of pipe in thirty-six different States, and that the pipe sold would have to be delivered in those States from the four States in which defendants' foundries were situate. They knew that freight rates and transportation were a most important element in making the price for the pipe so to be delivered. They charged the successful bidder with a bonus to be paid upon the *shipment* of the pipe from his State to the State of the sale. Under their first agreement, the bonus to be paid by the successful bidder was varied according to the State in which the sale and delivery were to be made. It seems to us clear that the contract of association was on its face an extensive scheme to control the whole commerce among  
393 thirty-six States in cast-iron pipe, and that the defendants were fully aware of the fact whether they appreciated the application to it of the anti-trust law or not.

Much has been said in argument as to the enlargement of the Federal governmental functions in respect of all trade and industry in the States, if the view we have expressed of the application of the anti-trust law in this case is to prevail, and as to the interference

which is likely to follow with the control which the States have hitherto been understood to have over contracts of the character of that before us. We do not announce any new doctrine in holding either that contracts and negotiations for the sale of merchandise to be delivered across State lines are interstate commerce (see cases above cited), or that burdens or restraints upon such commerce, Congress may pass appropriate legislation to prevent and courts of the United States may in proper proceedings enjoin. *In re Debs*, 158 U. S., 564. If this extends Federal jurisdiction into fields not before occupied by the General Government, it is not because such jurisdiction is not within the limits allowed by the Constitution of the United States.

The prayer of the petition that pipe in transportation under the contract of association be forfeited in a proceeding in equity like this is, of course, improper, and must be denied. The sixth section of the anti-trust act, after providing that property owned and in transportation from one State to another or to a foreign country under a contract inhibited by the act, "shall be forfeited to the United States," continues, "and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law." This requires a like procedure to that prescribed in sections 3309-3391, R. S., and involves a trial by jury. The only remedy which can be afforded in this proceeding is a decree of injunction.

For the reasons given the decree of the circuit court dismissing the bill must be reversed with instructions to enter a decree for the United States perpetually enjoining the defendants from maintaining the combination in cast-iron pipe described in the bill and substantially admitted in the answer, and from doing any business thereunder.

394 And afterwards, to wit, on March 21st, 1898, the following petition for appeal and assignments of error were filed in said court in said cause, which read and are as follows :

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA

vs.

ADDYSTON PIPE & STEEL CO., DENNIS LONG & Co., HOWARD-Harrison Iron Co., Anniston Pipe & Foundry Co., South Pittsburgh Pipe Works, and Chattanooga Foundry & Pipe Works. }

*Petition for Appeal.*

The above-named defendants, conceiving themselves aggrieved by the decree made and entered on the 14th day of February, 1898, in the above-entitled cause, reversing the judgment of the circuit court and remanding the cause thereto, with instructions to enter a decree for the United States perpetually enjoining the defendants from

maintaining the combination in cast-iron pipe, as alleged in the bill, do hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignments of error, which are filed herewith, and pray that this appeal may be allowed, and that transcript of the record, proceedings, and papers upon which order was made, duly authenticated, may be sent to the Supreme Court of the United States.

BROWN & SPURLOCK,

*Attorneys for Defendants.*

This March 14th, 1898.

The foregoing claim of appeal is allowed.

JOHN M. HARLAN,

*Ass. Justice Sup. Ct. U. S.*

395 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA

*vs.*

ADDYSTON PIPE & STEEL CO., DENNIS LONG & Co., HOWARD-Harrison Iron Co., Anniston Pipe & Foundry Co., South Pittsburgh Pipe Works, and Chattanooga Foundry & Pipe Works. }

*Assignments of Error.*

And now, on the 5th day of March, 1898, come the said defendants, by Brown & Spurlock, their solicitors, and say that the decree in said cause is erroneous and against the just rights of the said defendants for the following reasons:

First. Because the dealings in and the sales to be made of cast-iron pipe under the agreement or association entered into between defendants, as shown by the pleadings and evidence and contemplated by said agreement or association, consisted of contracts to supply pipe to municipal gas and water companies, let to the lowest bidder, under and subject to municipal regulations and local laws.

Second. Because it was not the intent or effect of said association or agreement to restrain or monopolize trade or commerce among the States.

Third. Because defendants constituted but a part of the dealings in cast-iron pipe trading in the territory to which the agreement related, were engaged in business of a strictly private character, manufacturing and supplying pipe, an article susceptible of unlimited supply, on contracts let to lowest bidders, and the agreement or association was only intended and only operated to restrain  
396 competition as among defendants to the extent of effecting among them a fair division of the contracts secured by all, and was therefore neither a monopoly or an attempt to monopolize any part of the trade and commerce among the States.

Fourth. Because said contract or association did not unreasonably restrict competition among defendants, but the limitations were reasonable, in view of the interest of each defendant to avoid ruin-

ous competition, the private character of their business, the customs of the trade in which they were engaged, and the character of the article manufactured by them.

Fifth. Because said association or agreement, whether or not it was a monopoly, a contract in restraint of trade, or a collusion among bidders, and therefore void at common law, it did not monopolize or restrain interstate trade or commerce, and was not therefore void under the act of Congress of July 2, 1890.

Sixth. Because if said contract is within the provisions of said act, then the same is unconstitutional and void.

Wherefore the said defendants pray that the said decree be reversed, and that the said court may be directed to enter a decree dismissing complainants' bill.

BROWN AND SPURLOCK,  
*Sol's for Defendants.*

And afterwards, on the same day, to wit, on March 21st, 1898, an appeal bond was filed in said court in said cause, which is in the words and figures as follows:

397 Supreme Court of the United States.

UNITED STATES OF AMERICA

vs.

THE ADDYSTON PIPE & STEEL Co., DENNIS LONG & Co., HOWARD-Harrison Iron Co., Anniston Pipe & Foundry Co., South Pittsburgh Pipe Works, and Chattanooga Foundry & Pipe Works. }

Know all men by these presents that we, Chattanooga Foundry & Pipe Works, Anniston Foundry & Pipe Co., Howard-Harrison Iron Co., Dennis Long & Co., South Pittsburgh Pipe Works, as principals, and Frank Spurlock and Foster V. Brown, as sureties, are held and firmly bound unto the United States in the full and just sum of five hundred dollars, to be paid to the United States, its attorneys, officers, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at the United States circuit court of appeals for the sixth circuit, in a suit depending in said court between The United States, plaintiffs, and The Addyston Pipe & Steel Co., Dennis Long & Co., Howard-Harrison Iron Co., Anniston Pipe & Foundry Co., South Pittsburgh Pipe Works, and Chattanooga Foundry and Pipe Works, defendants, a decree was rendered against the said defendants, and the said defendants having obtained an appeal and filed a copy thereof in the clerk's office of said court to reverse the decree in the aforesaid suit, and a citation directed to The United

398 States, citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the 5th day of April next:

Now, the condition of the above obligation is such that if the said defendants shall prosecute said appeal to effect and answer all damages and costs if they fail to make the said plea good, then the above obligation to be void ; else to remain in full force and effect.

CHATTANOOGA FOUNDRY & PIPE WORKS,  
SOUTH PITTSBURGH PIPE WORKS,  
ANNISTON PIPE & FOUNDRY CO.,  
HOWARD-HARRISON IRON CO.,  
DENNIS LONG & CO.,

By BROWN & SPURLOCK, *Att'ys.*  
FRANK SPURLOCK, *Security.*  
FOSTER V. BROWN, *Security.*

Sealed and delivered in the presence of—  
— — —

The foregoing bond was acknowledged before me by Brown & Spurlock, attorneys of defendants, the principals therein, and by Foster V. Brown and Frank Spurlock, as sureties, and I certify that the sureties are solvent and good for the penalty of the bond.

CRAWFORD T. JOHNSON,  
*Deputy Clerk U. S. Circuit Court,*  
*Eastern District of Tennessee.*

[SEAL.]

This bond is approved this March 17th, 1898.

JOHN M. HARLAN,  
*Circuit Justice.*

399 UNITED STATES OF AMERICA, ss :

To The United States, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the United States circuit court of appeals for the sixth circuit, wherein The Addyston Pipe & Steel Company, Dennis Long & Co., Howard-Harrison Iron Company, Anniston Pipe & Foundry Company, South Pittsburg Pipe Works, and Chattanooga Foundry and Pipe Works are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this 14th day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

JOHN M. HARLAN,  
*Associate Justice of the Supreme Court of the United States.*

400 I acknowledge service of this citation upon complainant this 22nd day of March, 1898.

WM. D. WRIGHT,  
*U. S. Attorney, Eastern District of Tennessee.*



401 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record and the original citation in the case of *The United States vs. The Addyston Pipe & Steel Co. et al.*, No. 498, October term, 1897, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit and of the whole thereof.

Seal United States Circuit  
Court of Appeals, Sixth  
Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of

Cincinnati, Ohio, this 25th day of March, 1898.

FRANK O. LOVELAND,

*Clerk of the United States Circuit Court of Appeals  
for the Sixth Circuit.*

Endorsed on cover: Case No. 16,833. U. S. C. C. of appeals, 6th circuit. Term No., 269. The Addyston Pipe and Steel Company, Dennis Long & Company, Howard-Harrison Iron Company, Anniston Pipe & Foundry Company, South Pittsburg Pipe Works, & Chattanooga Foundry and Pipe Works, appellants, *vs.* The United States. Filed March 28, 1898.

No. 269. 51

Brief of Brown & Spurlock

Office Supreme Court  
FILED

JAMES H. McLENNAN

Filed Feb. 24, 1899.  
Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 269.

THE ADDYSTON PIPE AND STEEL COMPANY, DENNIS  
LONG & COMPANY, ANNISTON PIPE AND FOUNDRY  
COMPANY, SOUTH PITTSBURG PIPE WORKS, AND  
CHATTANOOGA FOUNDRY AND PIPE WORKS,

Appellants,

vs.

THE UNITED STATES.

Appeal from the United States Circuit Court of Appeals,  
for the Sixth Circuit.

Brief and Argument for Appellants.

FOSTER V. BROWN,  
FRANK SPURLOCK,  
Counsel for Appellants.



# Supreme Court of the United States

October Term 1898.

THE ADDYSTON PIPE & STEEL COMPANY,  
ET. ALS. *Appellants*,

*vs.*

UNITED STATES, *Appellee*

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## Statement of Case and Brief in Behalf of Appellants

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### STATEMENT OF CASE

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The petition filed in this case against The Addyston Pipe & Steel Company, of Cincinnati, Ohio, Dennis Long & Co., of Louisville, Kentucky, Howard-Harrison Iron Company, of Bessemer, Alabama, Anniston Pipe & Foundry Company, of Anniston, Alabama, Chattanooga Foundry & Pipe Works, of Chattanooga, Tennessee, and South Pittsburg Pipe Works, of South Pittsburg, Tennessee, made the following charges:

That the six companies named were the only ones within the territory covered by the thirty-six states enumerated hav-

ing a capacity sufficient to supply the demand, in said territory, for cast-iron pipe; that the few other pipe works located in the same territory were, on account of limited capacity, unable to compete with the other companies, and had been driven out of the market by them.

That "in order to monopolize the trade in cast-iron pipe, especially in the above named states and territories, and force the price of same to an unreasonable and exorbitant rate, and destroy all competition in regard thereto, and force the public to pay exorbitant and unreasonable prices for said cast-iron pipe they did," at a time and place named, "enter into a contract or combination in the form of trust or conspiracy, in restraint of trade or commerce among the several states and territories above named, in regard to the manufacture and sale of cast-iron pipe," in violation and defiance of law, "and was intended by defendants to enable them to defraud the public in the purchase and use of the pipe manufactured by them;" that the companies were and had been since the date named "operating their shops in obedience to and according to the agreement entered into on said date, *and are now engaged in selling and shipping from their shops said cast-iron pipe into other states and territories than the states and territories in which defendants reside, and under contracts entered into with citizens of such other states and territories.*"

That as a part of said combination among defendants as to any work done or pipe furnished in the territory named, and to make this purpose effectual, it was agreed that a bonus should be charged on every ton of pipe sold in this territory, the amount of bonus being determined by how much the combination could force the customer to pay and represented the amount over and above a fair price, and ranged from three to nine dollars.

That it was also a part of said agreement that each of

said companies be allotted certain cities which it had the right to furnish, called the "reserve cities," the other companies only bidding on the work to be done for such cities such sums as would enable the particular company to secure the work.

That "defendants on or about the 27th day of May, 1895, to enable them to realize greater profits to themselves on the sale of their pipe, and to make the monopoly in their territory on the use and sale of the same, more complete, and to more fully effectuate the conspiracy entered into on said 28th day of December, 1894, adopted what they called the 'auction pool' plan for bidding on work in the 'pay territory'—the thirty-six states named. To carry this out each of the defendants selected one man, and the six men selected constituted an executive committee, which said committee was to be located in some central city, at present at Chicago, to whom all inquiries for pipe were to be referred. On receipt of such inquiry, this committee, in a room with no one present but themselves, secretly and fraudently bid for the job, the one agreeing to pay the greatest amount of 'bonus' of course to receive it. By this secret, and fraudulent and criminal manner petitioner charges all the work done by defendants since June 1, 1895, has been secured. After this 'auction pool' was over, as to each particular job, each of the defendants was notified whose representative had bid the most, and the amount of the bid, and this bid was sent by the defendant securing the job at the 'auction pool' to the party wanting the pipe, the other defendants all sending in a bid for a higher price, carrying out their criminal agreement to 'protect' each other, and securing the job to the highest bidder at the 'auction pool,' thus reversing the order of things, by giving the job to the highest, instead of the lowest bidder, the deluded customer of course being ignorant as to the manner in which he is being swindled."



It was also charged "that the kinds of contracts secured by defendants are, in the main, contracts to furnish pipe to gas and water companies, and to municipal corporations for sewerage and other purposes, which said contracts, after advertisements for bids, are let to the lowest bidders."

Appellants demurred because it did not appear from the terms of the contract or combination as alleged that it undertook directly to restrain or monopolize trade or commerce among the states.

At the same time they answered as follows:

That they were and had been for a number of years, engaged in the manufacture of cast-iron pipe, a commodity capable of unlimited production, and sold only to or for other corporations, and generally under contracts requiring it to be manufactured, tested and delivered according to specifications furnished in each case, so that sales thereof differed from simple contracts of sale of ordinary merchandise.

It was denied that the companies named were the only ones situated in the territory described; but on the contrary averred that there were a number of other similar works in said territory, and some of them, with respect to a large part of said territory, better situated for securing advantageous freight rates.

That the other companies in the same territory had a larger daily capacity than the aggregate daily capacity of all the defendant companies, and there still were other works outside of said territory, and which sold pipe in all states of the Union, some of them alone having a greater capacity than all defendants combined.

That practically no sales of pipe were made as manufacturers usually disposed of their products, but that all the pipe was manufactured and delivered under contracts which had

been previously let to the lowest bidder after advertising for bids and inviting the competition of all companies in the United States.

That this method of letting their contracts brought all pipe companies into active competition for each contract to be let to the lowest bidder, gave to gas, water and municipal corporations the advantage of buying at the ruinous competition of the bidders, while said bidders had no other market; that this method of letting all contracts prevented the establishment of fair market prices and arrayed each pipe company against the others with strong motives not only to underbid, but otherwise to injure each other.

That to meet this situation they united in an association for mutual advantage in various respects, and to secure among themselves a fair distribution of the contracts to be let, according to their relative capacities. To secure this end it was agreed that a certain part of the amount received by each company on every contract taken in certain states called "pay territory" should be held as a fund owned in common and kept in the debit account of the concern taking the contract until settled by clearance balances to equalize the accounts. The amount out of each sale held as a partnership or common fund was called the "bonus," and was the same whether the pipe was sold above or below the cost thereof.

From the time the association was formed, in December, 1894, until May, 1895, it was a fixed sum per ton, varying in amounts in the different states covered by the agreement. It did not prevent competition among the six companies except that to the limited extent on the price of each ton of pipe sold there was to be an accounting to the other companies.

That from and after May 1, 1895, and at the time petition was filed, there was in force a different arrangement for fixing the so-called "bonus." There were meetings in which each of the companies were represented by a competent sales-

man, and to which were referred all the contracts to be let. These representatives of the six companies first determined what would be a fair amount to bid on each contract, and then determined among themselves which company should have the co-operation or protection of the others in securing the contract. This was determined by bidding. The company bidding the largest "bonus," or in other words, agreeing to treat the largest per cent. of the price to be bid for a contract as the common or partnership fund was selected to secure the contract.

That the price as between the company securing the contract and the customer was always fair and reasonable and fixed by competition from companies outside of the association which could and did put in bids on all the contracts let. The contracts could only be secured when one of the associated companies put in the lowest bid.

The only effect of this arrangement was to avoid destructive competition and secure a relatively equal distribution of the contracts.

It was expressly denied that this agreement was intended to or did restrain or monopolize inter-state trade or commerce, or any part thereof; or that it was under the peculiar circumstances an unreasonable restraint on the competition that would otherwise exist between defendants.

## EVIDENCE.

Petitioner filed the following affidavits:

*Martin Manion* stated that his firm took a contract in 1895 to lay pipe and extend the mains of the New Orleans Water Company, and that previous to doing so he asked for propositions from the leading foundries of the south and southwest; that he could not bid on the contract because the

prices submitted were too high; that from Chattanooga being \$21.75 per ton; but that a few days before the biddings were opened his firm received offers from the Radford Pipe & Foundry Co., of Virginia, to furnish the pipe at \$14 and \$15. This price was subsequently advanced by the Virginia Company.

He also learned from a third party that he could get pipe from one of appellants if it was bought for export.

This affidavit and letters attached show that the pipe which the Virginia Company agreed to furnish for \$14.00 and \$15.00 was old pipe that had been rejected by the Syracuse, N. Y., Water Company, and had not been manufactured under the specifications and terms prescribed by the New Orleans Company.

When the latter company was informed of this fact by one of appellants and another company not in the association, it declined to allow Manion's firm to use the old pipe in their system, and he was compelled to buy other pipe, on which account he claims to have been seriously damaged.

Record, 37.

*Cephas M. Brown*, the next witness, files extracts from the minutes of the Board of Water Works Commissioners, showing the openings of biddings for the supply of pipe to Atlanta, from which it appears that the first proposition of Anniston Company was \$24.00 per ton, and three others of the associated companies and R. D. Wood & Co., of Philadelphia, put in higher bids, all of which were rejected, and on new bids being submitted the contract was awarded to the Anniston Company at \$22.75 per ton.

The specifications and requirements of the contract are not stated.

Record, 43.

*James H. Bible*, the District Attorney who filed the petition, details certain conversations he had with parties at the

office of the water company in St. Louis soon after he filed the petition. The substance of these conversations is: that the associated companies were so situated with reference to St. Louis that on account of freight rates they could hold the price of pipe at about \$23.00. But it was shown in the same conversation that in 1893, before there was any association, the price was \$24.90, \$26.80 and \$25.60, except in one instance.

Record, 51.

*Emory S. Foster*, next affiant, deposed: that he was the official of the city of St. Louis whose business it was to advertise for bids on pipe to be furnished for that city; that the city charter required advertisement for bids, and the awarding of the contract to the lowest bidder; that appellants and all others who made bids were regarded as bidding in good faith and honestly competing with each other. He files statement of bids made, showing no material change in price since December 28, 1894.

Record, 54.

*J. E. McClure*, next affiant, was the confidential stenographer of one of appellants, and stated that he had been so employed for several years; that he was present on December 28, 1894, when the association was formed between the six companies; that he had obtained copies of the proceedings of the association, and copies of letters written by various parties, all of which he exhibited with his bill.

This is the only witness who undertakes to prove that the "bonus" referred to in the proceedings represents "the price charged for pipe, over and above the legitimate price of same, and the price they would be willing to sell for if the pool did not exist between them and they had to compete with each other in open market."

Record, 61.

The first agreement, as shown by the minutes, was as follows :

*"First.* The bonuses on the first 90,000 tons of pipe secured in any territory, 16-inch and smaller sizes, shall be divided equally among six shops.

*"Second.* The bonuses on the next 75,000 tons, 30-inch and smaller sizes, to be divided among five shops, South Pittsburg not participating.

*"Third.* The bonuses on the next 40,000 tons, 36-inch and smaller sizes, to be divided among four shops, Anniston and South Pittsburg not participating.

*"Fourth.* The bonuses on the next 15,000 tons, consisting of all sizes of pipe, shall be divided among three shops, Chattanooga, Anniston and South Pittsburg not participating. The above division is based on the following tonnage capacity :

"South Pittsburg.....	15,000 tons.
"Anniston .....	30,000 "
"Chattanooga .....	40,000 "
"Bessemer.....	45,000 "
"Louisville .....	45,000 "
"Cincinnati.....	45,000 "

"When the 220,000 tons have been made and shipped and the bonuses divided as hereafter provided, the auditor shall set aside into a 'reserve fund' all bonuses arising from the excess of shipments over 220,000 tons, and shall divide the same at the end of the year among the respective companies according to the percentage of the excess of tonnage they may have shipped (of the sizes made by them) either in pay or free territory. The above proposition is intended to include all ordinary pipe specials in the tonnage named. It is also the intention of this proposition that the bonuses on all pipe larger than 36 inches in diameter shall be divided equally between the Addyston Pipe & Steel Company, Dennis Long & Company and the Howard-Harrison Iron Company. Pend-



ing the discussion of Mr. Dimmick's motion, the meeting adjourned at 2 p. m. for dinner.

"The meeting was called to order by the chairman at 3 p. m. Messrs. Long and Callahan, representing the Louisville shop, and Haughton and Davis, representing the Cincinnati shop, were present.

"The chairman of the meeting stated that the object of the meeting was to determine whether the Louisville and Cincinnati shops would be willing to become members of the association. He went over the ground and dwelt on the advantages that would result from an association as it could be conducted by the six shops, and also presented the disadvantages of working separately, the cutting of prices and other disastrous consequences that had resulted in the past from disorganization, jealousy and rivalry in business.

"He explained some of the workings of the Southern Association and set forth some of the advantages resulting from a thorough knowledge on the part of each member of the Southern Association of the business situation in the territory in which the association had operated during the past year.

"The resolution of J. K. Dimmick, providing for the passage of the proposition submitted by Mr. Nichols (F. B. Nichols), was voted upon and all companies voted 'Aye,' the Cincinnati representatives, however, reserving the privilege of submitting the proposition as voted upon to the directors of their company for their approval.

"Memorandum of agreement upon proposition of F. B. Nichols, which has already been agreed upon by the undersigned this, the 28th day of December, 1894.

"*First. Resolved*, That this agreement shall last for two years from the date of the signing of same, until December 31, 1896.

*"Second.* On any question coming before the association requiring a vote, it shall take five affirmative votes thereon to carry said question, each member of this association being entitled to but one vote.

*"Third.* The Addyston Pipe & Steel Company shall handle the business of the gas and water companies of Cincinnati, Ohio, Covington and Newport, Ky., and pay the bonus hereafter mentioned, and the balance of the parties to this agreement shall bid on such work such reasonable prices as they shall dictate.

*"Fourth.* Dennis Long & Co., of Louisville, Ky., shall handle Louisville, Ky., Jeffersonville, Ind., and New Albany, Ind., furnishing all the pipe for gas and water works in above named cities.

*"Fifth.* The Anniston Pipe & Foundry Company shall handle Anniston, Ala., and Atlanta, Ga., furnishing all pipe for gas and water companies in above named cities.

*"Sixth.* The Chattanooga Foundry & Pipe Works shall handle Chattanooga, Tenn., and New Orleans, La., furnishing all gas and water pipe in the above named cities.

*"Seventh.* The Howard-Harrison Iron Company shall handle Bessemer and Birmingham, Ala., and St. Louis, Mo., furnishing all pipe for gas and water companies in the above named cities; extra bonus to be put on East St. Louis and Madison, Ill., so as to protect the prices named for St. Louis, Mo.

*"Eighth.* South Pittsburg Pipe Works shall handle Omaha, Neb., on all sizes required by that city during the year 1895, conferring with the other companies and co-operating with them; thereafter they shall handle the gas and water companies of Omaha, Neb., on such sizes as they make.

*"Note.* It is understood that all the shops who are members of this association shall handle the business of the gas and water companies of the cities set apart for them, including all sizes of pipe made by them.

"The following bonuses were adopted for the different states named below: All railroad or culvert pipe, or pipe for any drainage or sewerage purpose, on 12-inch and larger sizes shipped into 'bonus territory,' shall pay a bonus of \$1.00 per ton. On all sizes below 12 inches and shipped into 'bonus territory' for the purposes above named, there shall be a bonus of \$2.00 per ton.

"LIST OF BONUSES.

Alabama .....	\$3 00	Birmingham, Ala.....	\$2 00
Anniston, Ala.....	2 00	Mobile, Ala.....	1 00
Arizona Territory .....	3 00	California .....	1 00
Colorado .....	2 00	Indian Territory.....	3 00
North Carolina .....	1 00	Tennessee, east of C.	
Tennessee, middle and		land .....	2 00
west .....	3 00	Illinois, except Madison	
Wyoming .....	4 00	and East St. Louis, as	
Oregon .....	1 00	previously provided....	2 00
Ohio .....	1 50	North Dakota.....	2 00
South Dakota.....	2 00	Florida .....	1 00
Georgia .....	2 00	Atlanta, Ga.....	2 00
Georgia coast points.....	1 00	Idaho.....	2 00
Nevada .....	3 00	Oklahoma.....	3 00
Wisconsin .....	2 00	Texas, interior.....	3 00
Texas, coast .....	1 00	Washington Territory....	1 00
Michigan .....	1 50	West Virginia.....	1 00
Kansas .....	2 00	Kentucky .....	2 00
Louisiana .....	3 00	Mississippi .....	4 00
Missouri.....	2 00	Montana .....	3 00
Nebraska.....	3 00	New Mexico.....	3 00
South Carolina.....	1 00	Minnesota .....	2 00
Utah .....	4 00	Indiana .....	2 00
Iowa .....			\$2 00

"All other territory free.

"On motion of Mr. Llewellyn, the bonuses on all city work as specially reserved, shall be \$2.00 per ton.

"It is agreed in the first place that every order shall be reported daily, whether from free territory or bonus territory, giving consignee and destination.

"Reports of shipments shall be made on the 1st and 16th of each month for the preceding half month's shipments, and the auditor is hereby authorized to draw on each company at sight for their debit balances for the time reported.

*“Resolved, That every member of this association be required to file with the auditor a report of all orders on their books at the date that this association goes into effect, and that the report shall be final and binding, and only such orders shall be exempted from bonus payment in pay territory; further, as soon as it is ascertained that all have agreed to come into this association, that they at once notify the parties to whom they have made quotations, withdrawing the same at once, and no orders are to be accepted on quotations previous to entering this agreement by the parties hereto, unless they are willing to pay the bonuses established.*

*“The following resolution was offered by W. L. Davis :*

*“Resolved, At any meeting of this association at any time any member having grievances against any buyer for default of payment or other grounds, complaint may be submitted at a meeting and ask the co-operation of the other members in such a manner as may be decided upon to compel the adjustment of said grievance, either by refusing to quote the party in default on pipe, or such other means as the association may agree upon; or the party aggrieved shall at once report the complaint to the auditor, who shall make carbon copies and send one to each member of the association.*

*“Agreed that all quotations after this date forward shall be made with a view of paying bonuses fixed this date until further advised.*

*“Following resolution was offered by F. B. Nichols :*

*“Resolved, That Mr. Llewellyn be made acting chairman under this agreement, until he has relief, and that in the event that the Addyston Pipe & Steel Company conclude at their board of directors' meeting to confirm the action of their representatives, Messrs. Haughton and Davis, at meeting to-day, that they wire Mr. Llewellyn, and that he, on receipt, wire each of the other parties hereto, and that the agreement shall then immediately go into effect and become binding on all parties.*

*"Resolved*, That the acting secretary mail copy of these minutes to each party hereto on tomorrow, December 29th, 1894.

"The following resolution was offered by F. B. Nichols :

*"Resolved*, That in the event this association is entered into, that the Howard-Harrison Iron Company release each and every party from their obligation in reference to Minneapolis letting January 7th, 1895; in the event that the agreement is not entered into, the Howard-Harrison Iron Company are still to endeavor to handle under agreement entered into at Chicago and subsequently changed at Minneapolis."

In pursuance to this agreement the following by-laws were adopted :

"At a meeting of the Associated Pipe Works, 8 Bates Block, Chattanooga, Tenn., January 23, 1895, the following by-laws were adopted :

*"First*. This association shall last two years from January 1st, 1895, and shall have an executive committee, consisting of a member of each company.

*"Second*. The officers of this association shall be :

"1. A chairman, who shall preside at all meetings, and call special meetings when he may deem it advisable, and have general supervision of the affairs of the association.

"2. An auditor, who shall have an office at Chattanooga and shall keep the records of the association and perform the duties of secretary, in the absence of a regular appointed secretary; make such reports and statements as may be hereinafter provided; checking the books and accounts of the several shops who are members of this association, and perform such other duties as may be hereafter assigned to him.

"3. An assistant to the auditor, who shall perform duties of the auditor during his absence from the office of the associ-

ation and assist him regularly in all the duties of the office.

" *Third.* 1. Each shop shall report daily to the auditor all orders secured in bonus or free territory, giving the shop number of same, number of pieces of each size and the weight per piece or such part of both as can be given from the nature of the order.

" 2. On the 1st and 16th of each month they shall report to the auditor all shipments made in all territory, giving shop number, destination, and sizes of each shipment, and a summary in tons or pounds; showing the amount of bonus and tonnage, of the bonus as well as free territory.

" *Fourth.* 1. The auditor shall make carbon copies daily of all reports received, and send one to each shop, and to such others as may be designated.

" 2. He shall keep such records and accounts as will enable him to exhibit at all times the exact status of the affairs of the association.

" 3. He shall on the 1st and 16th of each month, or as soon as practicable, send to each shop a statement of all shipments reported in the previous half month, with a balance-sheet showing the total amount of the premiums on shipments, the division of the same, and a debit-credit balance of each company; also a statement of the free orders secured during the same period; and a memorandum of balance payable from one to another.

" 4. The auditor shall once each month thoroughly check the books of each company in such manner as may be necessary to determine the fact that on all orders secured and shipments made, the bonuses paid into the association, have been properly made and performed by each member of the association, and shall make a monthly report to all of the parties of the association, of the results of the checking of the books of each company; and shall be authorized to charge and credit each company in such a manner as may be neces-



sary to make the books and records correct, according to the basis of the agreement entered into December 28th, 1894, and further amended and perfected this date.

The following resolution was adopted :

"Whoever has a representative at any public letting shall instruct him to send to the auditor a full list of the bids and bidders on same ; also that all information in regard to work taken in pay territory by the shops outside of this association shall be reported to the auditor, who shall keep a proper record of such information and send carbon copies of same to all of the members of this association.

"It was agreed that the six members of this association divide the expenses of the Chattanooga office, share and share alike.

"On motion adjourned."

Record, 64-69.

In May, 1895, the plan of the association was changed in accordance with the following resolution :

"WHEREAS, The system now in operation in this association of having a 'fixed bonus on the several states' has not in its operation resulted in the advancement in the prices of pipe as was anticipated, except in 'reserved cities ;' and some further action is imperatively necessary in order to accomplish the ends for which this association was formed ; therefore,

"*Be it Resolved*, That from and after the first day of June that all competition on the pipe lettings shall take place among the various pipe shops prior to the said letting. To accomplish this purpose it is proposed that the six competitive shops have a 'representative board' located at some central city to whom all inquiries for pipe shall be referred, and said board shall fix the price at which said pipe shall be sold, and bids taken from the respective shops for the privi-

lege of handling the order, and the party securing the order shall have the protection of all the other shops. Should it be deemed best for the interest of this association to eliminate the southern territory from the control of the 'general pool,' and refer all lettings in said territory to the southern shops for their exclusive action, upon the agreement of the four southern shops to pay this association the fixed bonus now in force on said southern states, said southern shops to have the option of doing so.

"All division of bonuses to remain as now established during the year 1895."

Record, 70-71.

McClure also filed copies of the minutes of other meetings, but showing no other contract than already quoted. The subsequent meetings related to the "bonus" on different jobs obtained. The correspondence shows only the individual views of the members at different times as to prices, bonuses, etc. The minutes quoted show all there was of an agreement.

In their conclusion as to the facts established, the Circuit Court of Appeals attaches little or no weight to the affidavits filed in behalf of appellants.

These affidavits are as follows :

I.

That there were in the United States and in the territory of the alleged monopoly, the pipe works as stated on pages 37 and 38 of the Record, being nine in the territory embraced in the bill and ten others in the outside states, as follows :

**SHOPS LOCATED IN TERRITORY COVERED BY BILL IN ADDITION TO  
MEMBERS OF ASSOCIATION.**

	Capacity per day
Ohio Pipe Co., Columbus, O .....	150 tons
Lake Shore Foundry, Cleveland, Ohio .....	200 "
J. B. Clow & Son, New Comerstown, O.....	75 "
Peninsular Car & Foundry Co., Detroit, Mich.....	100 "
Shickle, Harrison & Howard, St. Louis, Mo.....	60 "
Rusk Foundry, Rusk, Texas .....	50 "
Oregon Iron Works, Portland, Oregon.....	50 "
Colorado Iron & Fuel Co., Pueblo, Col.....	75 "
West Superior Iron Co., Duluth, Wis.....	75 "
	<hr/> 835 tons

**SHOPS LOCATED OUTSIDE OF TERRITORY MENTIONED IN THE BILL.**

	Capacity per day
Donaldson Iron Co., Emaus, Pa. ....	100 tons
Warren Fdy. & Mach. Co., Phillipsburg, N. J.....	200 "
McNeil Pipe & Fdy. Co., Burlington, N. J.....	225 "
R. D. Wood & Co., Millville, Florence, Camden, N.J.	400 "
Reading Foundry, limited, Reading, Pa .....	125 "
Jackson & Woodfin, Berwick, Pa .....	75 "
Buffalo Cast Iron Pipe Co., Buffalo, N. Y .....	100 "
Glamorgan Iron Co., Lynchburg, Va.....	75 "
Nat. Pipe & Fdy. Co., limited, Scottsdale, Pa.....	200 "
Utica Pipe & Foundry Co., Utica, N. Y.....	50 "
	<hr/> 1,550 tons

Record, p. 36-37.

That affiants were familiar with the pipe business as buyers, knew at different times the cost of pig iron, the capital required to operate pipe works, and thought the prices paid by them were reasonable and fair; they were the lowest prices that could be obtained on bids submitted to different works.

These statements were made by contractors, managers of municipal water and gas plants, and others whose business would require them to keep informed of the prices of pipe:

H. D. Hallett, Record, p. 103;  
F. A. W. Davis, Record, p. 105;  
W. H. Garnett, Record, p. 108;  
Casper Chisholm, Record, p. 111;

T. W. Sneed, Record, p. 153 ;  
 A. L. Bierbower, Record, p. 143 ;  
 Jno. Canefield, Record, p. 181 ;  
 George C. Morgan, Record, p. 104 ;  
 R. R. Dickey, Record, p. 106 ;  
 August Herman, Record, p. 110 ;  
 P. B. McKenzie, Record, p. 112 ;  
 C. C. Ferguson, Record, p. 174 ;  
 W. S. Kuhn, Record, p. 157 ;

and others to the same effect.

These affidavits show that when contracts to furnish pipe were to be let, bids were asked from the other pipe works, and the contract awarded to the lowest bidder ; that the bids were based on specifications requiring certain character of pipe to be manufactured and delivered, sometimes in the outskirts of the cities, or where it was to be laid, and subject to rejection at the place of delivery.

Record, 153, 206, 237.

A number of the affidavits were made after McClure had agreed to furnish evidence of the agreement and to prove that affiants had been swindled and were entitled to damages.

*Park Woodard*, superintendent of Atlanta Water Works, and H. C. Erwin, one of the aldermen of that city, state that McClure made the same proposition to Atlanta, whereupon they investigated and found that the prices which Atlanta had paid to the Anniston Company were not exorbitant, and afforded the company no more than a reasonable profit.

Record, 166-167.

*M. L. Holman*, Water Commissioner for St. Louis, filed a statement showing the prices paid by that city from April, 1892, to October, 1896. From this it appears that the contract

prices before the association was formed, ran as follows: April 12, 1892, \$24.95; July 26, 1892, \$25.48; October 11, 1892, \$25.48; August 7, 1894, \$19.94. The prices after the association was formed were: March 26, 1895, \$19.85; May 17, 1895, \$20.96; September 17, 1895, \$22.47; February 4, 1896, \$24.00; July 28, 1896, \$19.64; October 6, 1896, \$19.94.

Record, pp. 196, 197.

A copy of one of the contracts made with the city of St. Louis details the specifications as to the size of pipe, its manner of manufacture, capacity, loading on cars, and how it was to be stacked or piled in the pipe yards at St. Louis; the pipe was to be tested at the works whenever desired by agents of the city at the company's expense.

It was also provided that agents of the city might reject pipe when received, and that citizens might make complaints while it was being laid, and call for investigations to be made at the company's expense. There is also incorporated an ordinance prohibiting the working of laborers more than eight hours a day on penalty of forfeiting the contract and becoming ineligible to make future contracts.

The performance of all these conditions and others, was secured by bond with sureties.

Record, p. 246.

Before any contract for pipe is advertised there is required to be made by the water department an estimate of cost which is not to be exceeded. All bids could be rejected.

The price at which pipe has been sold to St. Louis has always fallen considerably below this estimated price.

This is regarded by the St. Louis officials as the best safeguard against unfair prices on all contracts let under its ordinances, and was one of the reasons why that city refused to bring suit on the information which McClure proposed to furnish.

Letter of W. C. Marshall, Tr., p. 254.

## II.

There were filed affidavits from at least five of appellants' competitors, all stating in substance as follows:

"The company represented by affiant was, during the years 1895 and 1896, an active competitor of the six defendants in the suit above referred to for orders in the territory named in said section 3 of said petition above referred to, and secured during the years 1895 and 1896 its reasonable proportion of the orders in said territory.

"A very large proportion of the orders which are placed for cast-iron pipe are placed after advertising for bids and receiving proposals which are opened in the presence of, and read to, the bidders; even when bids are not solicited by a regular advertisement, but by specific invitation by letter or otherwise to each bidder, the orders are in most cases given to the lowest bidder. I am therefore in position to know that a very large proportion of the orders secured during the years 1895 and 1896 by the six defendants in the suit above referred to, were taken at prices which were not only fair and reasonable and such as would not leave the manufacturer more than a very moderate margin of profit, but that on many of the orders the prices were so low as not to leave a reasonable profit to the manufacturer."

A. C. Holt, for Nat. Fdy. & Pipe Wks.,  
Record, 147.

W. E. Clow, for J. B. Clow & Sons, Record,  
149.

Oliver Phelps, for Mich. Pen. Car & Fdy.  
Co., Record, 155.

C. E. Burke, for Lake Shore Fdy. Co.,  
Record, 163.

H. E. McWane, for Glamorgan P. & F. Co.,  
Record, 164.



## III.

The officials of appellants filed affidavits to the following effect:

That pipe could be manufactured in unlimited quantities, and owing to the manner in which contracts were let to supply pipe, the manufacturers being required to bid on specifications varying in their requirements, there could be no market price fixed, but the same depended in each case on the terms of the contract to be filled;

That on large orders the purchaser sent inspectors to the works with the option to reject any pipe which he disapproved, and owing to difference in rules of inspection the per cent of pipe rejected would vary from 1 to 25 per cent; and in fixing the price to be bid on any contract it was necessary to consider the terms of payment, the specifications and tests and other circumstances peculiar to that contract;

That while appellants have the advantage in freight in the portions of the territory nearest to them, there were other pipe works near the sea coast that had better rates to New Orleans and other cities near the coast;

That in the last ten years new pipe works in the east and south had been built until the supply of pipe exceeded the demand and necessitated some restriction in competition to prevent ruin to the individual plants. It was in consequence of and to avoid this ruinous competition that appellants formed the association of December, 1894, as modified by the resolution of May, 1895; the property of appellants was useful only in the pipe business, and would be destroyed if it could not be so used;

That unreasonable and unfair prices had not been charged under the agreement, and were in all cases fixed by competition with other concerns, and had been on an average less in 1894, 1895 and 1896 than in preceding years;

That on account of the large cost of closing down they could afford to and did frequently sell pipe at a loss, especially in that territory to which the bonuses did not apply; and they could afford to sell pipe on hand or in stock at a much cheaper rate than pipe manufactured under the specifications usually presented;

That the bonus was not the sum above a fair price, but was the portion of the price representing the common interest of appellants, of which accounts were kept and balances remitted twice a month, and, being deducted from a fair price, operated to restrain each concern from undertaking to do more than its fair share of the work which all could secure, or was so intended by the agreement; for the year 1895 the actual clearance settlements amounted to only 38 cents per ton, and from January 1, 1895, to September 15, 1896, to 58 cents, the latter figure being larger on account of the small sales in the latter part of 1896.

A. F. Callahan, R. 216.

C. W. Harrison, R. 177.

M. Llewellyn, R. 200.

As recited in the decree of the Circuit Court, the cause "was heard upon application for injunction as prayed in the original bill, which hearing was by stipulation of the parties treated as a hearing upon the merits."

R. 288.

The affidavits in behalf of the United States were filed on the 25th day of January, 1897, (R. 37, 43, 51 and 59), the day on which the case was heard.

The affidavits in behalf of appellants were prepared for the purpose alone of meeting the allegations of the petition or bill for injunction. They were necessarily, therefore, of a

formal type—formal in the sense that instead of one there were many to the same effect in denial of each allegation of the bill. They were also filed on the day of trial.

If appellants are not denied the probative effect of these affidavits because they are numerous, then we may assume that there is established, by this great number of uncontradicted witnesses, the following facts:

1. That the business in which appellants were engaged was of a private nature, the commodity they dealt in was susceptible of unlimited production, and manufactured in the main for certain other corporations on contracts secured by bids based on conditions and specifications so varying in each case as to affect and vary the price.

2. That on account of the necessity of constant operation, the cost of closing down and resuming work, and the advantage or difference in selling from stock instead of manufacturing under specifications, and other differentiating circumstances, the price at which one order for pipe is filled is no test of the fair price at which another contract should be taken.

3. That in the territory in which appellants were alleged to have monopolized the trade in cast-iron pipe there were in December, 1894, foundries having a capacity in excess of the demand, and a custom of letting all contracts to the lowest bidder, including appellants and all others, thus producing a ruinous competition in securing each contract to be let.

4. That in December, 1894, the six appellants agreed that certain fixed sums per ton on all contracts they secured in thirty-six given states should be deducted from the price at which the contract was taken, and credited to the common account and the balances remitted from one to the other at stated periods; that from and after May, 1895, that part of the price on contracts secured which represented the common

interest, was fixed in advance of each letting by competition among appellants, the one offering to treat as a community fund the largest part of the contract price to receive the assistance and protection of the others in securing the contract, in which all were interested to the extent of the so-called bonus.

The appellants, in number and capacity, were but a fraction of all the bidders on each contract let, and the price to buyers was in all cases fixed by competition with others and not by the agreement existing among appellants, the bonus being deducted from the price thus fixed and not added to it. After equalizing the bonus charged from January, 1895, to September, 1896, the balance was only 58 cts. per ton.

5. That the prices received by appellants were considered fair and reasonable by their customers who were acquainted with the terms and conditions of each contract let, and who professed to know the cost of material and manufacture.

We therefore insist : That appellee having failed to prove any of the allegations of the petition except the existence of the association admitted by the answer, the only question for consideration is whether that agreement of itself, and for the purposes as shown by appellants, constitutes a monopoly or contract in restraint of interstate commerce.

By the terms of the contract each of appellants was left in full ownership and management of its plant. There was no Central Committee or Board having power to control the business affairs or works of these companies. The pipe manufactured and shipped was always the exclusive property of the company which manufactured and sold it. Neither of the other companies, either singly or collectively, had any interest in pipe manufactured and sold by either of appellants.

But the agreement did provide that whenever either of the parties thereto secured a contract in certain territory the

others were to share in this price to a certain extent, being the portion of which an account was to be kept for the benefit of all, and by an accountant representing all. The remainder of the price was the exclusive property of the selling company.

This portion of the selling price, called a bonus, which was to be divided among the companies according to their relative capacities, was first a fixed sum per ton, according to the locality in which it was sold, but was afterwards fixed in advance on each contract to be let. It in substance constituted a partnership interest in the selling prices to the extent of the bonus. If all did relatively the same amount of work on the same bonus, there would be an exact equalization, whether the bonus was large or small. The bonus was only material when the amounts sold by the companies were unequal. When the contracts that could be secured were less than the supply of the six companies, the bonus was intended to and did make it to the advantage of each that all should have a reasonable share of the contracts—otherwise the bonuses would have become a ruinous burden to the companies securing an excessive amount of the trade.

If the bonus was an amount over and above a fair price it would not operate to restrain appellants, but only to maintain higher prices.

*The purpose and effect of this association was to provide that there should be a bonus for division among the members, to be deducted out of prices received, and proper accounts kept and settlements made thereof by periodical remittances of balances.*

From December, 1894, to May, 1895, the bonus was a sum stated in the contract itself of so much per ton on contracts taken in each state in the territory covered; from May, 1895, the bonus was agreed on in advance of the letting of each contract, after bids were solicited or advertised for, and before the contract was actually let.

This agreement or "auction pool" as it was called, determined the "bonus" or the extent to which all the members of the association would be entitled to share in the purchase price to be paid under the contract, if it was secured. It also resulted that the member bidding, or agreeing to pay, the largest bonus became entitled to the assistance or protection of the others in securing the contract.

When the bonus was thus agreed on, and the member selected to make the bid, the association compact had accomplished its purpose, and it was thereafter that the contract was let, as advertised and bid on by the selected member of the association. If this bid was the lowest the contract was secured and the pipe manufactured and delivered in accordance with the terms thereof.

If an outside manufacturer put in a lower bid, as often happened, the contract was not secured.

There was no contract between a buyer and purchaser of goods, either involving or not involving shipment from one state to another, until after the contract was awarded and the association compact had ceased to operate. There was not until this time any kind of contract between buyer and seller involving either domestic or interstate commerce. The bids were usually opened in the presence of the bidders, but whether so or not, the contracts were advertised, let, executed and performed under local regulation, state or municipal.

If the foundry of the successful bidder was in a different state from that in which the contract was secured, it was necessary after the pipe was manufactured to ship it to the place of delivery, where it was inspected and rejected or received by the purchaser. It was when shipped the exclusive property of the company which had taken the contract to manufacture and deliver it. While the other members of the association had been credited with a certain portion of the selling price, this had either then been paid or at least only stood as a charge against the seller independent of his con-



tract with the purchaser, and in no manner affected the ownership of the pipe.

There is this final consideration of fact which was overlooked, as we think, by the Circuit Court of Appeals: *Contracts to supply pipe were always let to the lowest bidder, and by the custom of buying even if no association had existed, each contract would have been let to one company to the exclusion of all the others. The selection therefore of one out of six to make the bid could not have restrained five others from securing the contract.*

The Circuit Court dismissed the petition, from which there was an appeal to the Circuit Court of Appeals of the Sixth Circuit.

In this Court it was held that the agreement of association was a contract, combination or conspiracy in restraint of interstate trade or commerce, that the decree of the Circuit Court should be reversed and the defendants enjoined as prayed in the petition.

From this decree defendants in the petition have appealed to this Court and assigned the following errors:

*"First.* Because the dealings in and the sales to be made of cast-iron pipe under the agreement or association entered into between defendants, as shown by the pleadings and evidence and contemplated by said agreement or association, consisted of contracts to supply pipe to municipal gas and water companies, let to the lowest bidder, under and subject to municipal regulations and local laws.

*"Second.* Because it was not the intent or effect of said

association or agreement to restrain or monopolize trade or commerce among the states.

*"Third.* Because defendants constituted but a part of the dealers in cast-iron pipe trading in the territory to which the agreement related, were engaged in business of a strictly private character, manufacturing and supplying pipe, an article susceptible of unlimited supply, on contracts let to lowest bidders, and the agreement or association was only intended and only operated to restrain competition as among defendants to the extent of effecting among them a fair division of the contracts secured by all, and was therefore neither a monopoly nor an attempt to monopolize any part of the trade and commerce among the states.

*"Fourth.* Because said contract or association did not unreasonably restrict competition among defendants, but the limitations were reasonable, in view of the interest of each defendant to avoid ruinous competition, the private character of their business, the customs of the trade in which they were engaged, and the character of the article manufactured by them.

*"Fifth.* Because said association or agreement, whether or not it was a monopoly, a contract in restraint of trade, or a collusion among bidders, and therefore void at common law, did not monopolize or restrain interstate trade or commerce, and was not therefore void under the Act of Congress of July 2, 1890.

*"Sixth.* Because if said contract is within the provisions of said Act, then the same is unconstitutional and void."

## BRIEF.

### I.

THE ASSOCIATION WAS NOT A MONOPOLY OR ATTEMPT TO MONOPOLIZE TRADE OR COMMERCE IN THE TERRITORY DESCRIBED IN THE PETITION, NOR A CONTRACT IN RESTRAINT OF TRADE OR COMMERCE AMONG THE STATES.

The specific charge as made by the petitioner is, that appellants were the only manufacturers of cast-iron pipe in the territory covered by thirty-six states, having capacity sufficient to supply the demand for such pipe, and that they had by unfair means driven out the few small concerns that were unable to compete with them, thereby practically securing the whole trade in the states named.

That this charge was untrue, in fact, is shown from the evidence cited.

## NO MONOPOLY.

On the facts there was nothing that approached a monopoly.

Appellants represented but a small number of the manufacturers of cast-iron pipe, with a relatively small capacity. This pipe was so dealt in by the custom of trade that any corporation could buy all the pipe it needed without buying one single pound from any of appellants. There were other bidders on each contract let. No means were used to prevent others from bidding or competing for the trade.

"A monopoly in the prohibited sense," said Judge Jackson, "involves the element of an exclusive privilege or grant,

which restrains others from the exercise of a right or liberty which they had before the monopoly was secured. In commercial law, it is the abuse of free commerce, by which one or more individuals have procured the advantage of selling alone or exclusively all of a particular kind of merchandise or commodity to the detriment of the public. \* \* \* This being, as we think, the general meaning of the term, as employed in the second section of the statute, an 'attempt to monopolize' any part of the trade or commerce among the states must be an attempt to secure or acquire an exclusive right in such trade or commerce by means which prevent or restrain others from entering therein."

In *Re Green*, 52 Fed. R. 104.

We insist that there is barely a relationship between the case at bar and those cases usually cited as condemning monopolies.

In *Arnott v. Pittston Coal Co.*, 68 N. Y. 558; *People v. North River Sugar Refining Co.*, 121 N. Y. 582; *Central Salt Co. v. Guthrie*, 35 Ohio St. 666; *Croft v. McConoughby*, 79 Ill. 346; *Morris Run Coal Case*, 68 Pa. St. 173; *Gibbs v. Baltimore Gas Co.*, 130 U. S. 396; *Richardson v. Buhl*, 77 Mich. 632, and many others, there were certain marked considerations that show the distinction upon which we insist: In each case the public was directly interested in the combination alleged, either because the commodity in question was one of such prime necessity that its control affected the living and comfort of the general public, or because the business of defendants was of a public nature. It was also held in each case, either from the extent and character of the combination or the limited supply of the article, that prices could be fixed without competition and by simple dictation. There is no evidence in the record that the agreement of appellants contemplated the use of any means to prevent or restrain others

from entering into the trade in the territory described, or that they could have done so.

## CONTRACTS IN RESTRAINT OF TRADE.

It was held by the Circuit Court of Appeals that no contractual restraint of trade is lawful unless the covenant embodying it is merely ancillary to a lawful contract, as between vendor and vendee; in other words, that every agreement limiting competition between traders, whether reasonable or not, is unlawful.

This conclusion does not accord with the reason of the rule or the weight of authority.

When the parties to a contract or association are engaged in a strictly private business, manufacturing or dealing in an article susceptible of unlimited production, and one not of prime necessity and in which the public is only indirectly, if interested at all, and when there is no effort or power to prevent competition, the question as to the legality of such a contract depends purely on its reasonableness under all the circumstances of each particular case.

In such cases public policy has conflicting interests to be adjusted. The freedom of contract is of paramount consideration and is not lightly to be interfered with.

Printing & Numerical Reg. Co. v. Sampson,

L. R., 19 Eq. Cas., 462, 465.

Rousillon v. Rousillon, 14 Ch. Div., 351, 365.

National Benefit Co. v. Union Hospital  
Co., 45 Minn., 272.

Greenhood Pub. Pol., 116.

In *Oregon Steam Navigation Co. v. Winsor*, 20 Wall, 64, 68, Mr. Justice Bradley said:

"There are two principal grounds on which the doctrine is founded, that a contract in restraint of trade is void as

against public policy. One is, the injury to the public by being deprived of the restricted party's industry; the other is, the injury to the party himself by being precluded from pursuing his occupation and thus being prevented from supporting himself and his family."

It is very evident that the public is directly interested in the maintenance in a healthy condition of large business enterprises which support and maintain a great number of people. It is also true that in the present crowded condition of trade the public experiences no difficulty in finding a trader or manufacturer to buy from, and is, therefore, less interested in preserving competition.

In *Oakdale Mfg. Co. v. Garst*, 18 Rhode Island, 484, after citing and distinguishing the other class of cases, the court said:

"Undoubtedly there may be combinations so destructive of the right to buy and sell and to pursue their business freely that they must be declared to be void upon the ground of public policy. In such cases the injury to the public is the controlling consideration. But it does not follow that every combination in trade, even though such combination may have the effect to diminish the number of competitors in business, is, therefore, illegal. Such a rule would produce greater public injury than that which it would seek to cure. It would be impracticable. It would forbid partnerships and sales by those engaged in a common business. It would cut off consolidations to secure the advantages of united capital and economy of administration. It would prevent all restrictions and exclusive privileges and hamper the familiar conduct of commerce in many ways. There may be many such arrangements which will be beneficial to the parties, and not injurious to the public. Monopolies are liable to be oppressive, and hence are deemed to be hostile to the public good. But combinations for mutual advantage which do not amount to a



monopoly, but leave the field of competition open to others, are neither within the reason nor the operation of the rule.

\* \* \* \* \*

"Here there is no monopoly. Three of the four companies in New England in this line of manufacture agreed to unite; one inducement being to stop the sharp competition then existing between them. But even so, not only is the field open to the other company, equal in strength to either of these, but it is also open to competition from companies in other parts of the country, and to the formation of new companies. This is neither monopoly, nor such an approach to it as amounts to the same thing. It is the common occurrence of a consolidation of firms. It is not illegal, on the ground of reducing competition."

This case is in accord with *Tode v. Gross*, 127 N. Y., 480; *Shrainka v. Scharringhausen*, 8 Mo. App., 522; *Beal v. Chase*, 31 Mich., 521; *Dolph v. Troy Laundry Machine Co.*, 28 Fed. R., 553; 138 U. S., 620; *Kellogg v. Larkin*, 3 Pinney (Wis.), 123; *Dueber Watch Case Manufacturing Co. v. Howard*, 35 U. S. App., 16; *Central Shade Roller Co. v. Cushman*, 143 Mass., 353; *Diamond Match Co. v. Roeber*, 106 N. Y., 473; *Leslie v. Lorillard*, 110 N. Y., 519. This subject has been so elaborately discussed in other cases recently determined by this court that we deemed it unnecessary to cite further authorities on the proposition.

As said by the court in *National Benefit Co. v. Union Hospital Co.*, *supra*, "excessive competition is not now accepted as necessarily conducive to the public good. The fact is that the early common law doctrine in regard to contracts in restraint of trade largely grew out of the state of society and business which has ceased to exist, and hence the doctrine has been much modified, as will be seen by comparison of the early English cases with modern decisions, both English and American."

But this Court in *Gibbs v. Baltimore Gas Co.*, 130 U. S. 396, and *United States v. Freight Association*, 166 U. S. 290, treat the test of reasonableness as applicable to cases limiting competition where the agreement is between parties engaged in private business.

After quoting from the opinion of the Court in the *Gibbs* case, Mr. Justice Peckham in the last case said :

"The above extract from the opinion of the Court is made for the purpose of showing the difference which exists between a private and a public corporation—that kind of a public corporation which, while doing business for remuneration, is yet so connected in interest with the public as to give a public character to its business, and it is seen that while, in the absence of a statute prohibiting them, contracts of private individuals or corporations touching upon restraints in trade must be unreasonable in their nature, to be held void, different considerations obtain in the case of public corporations like those of railroads, where it well may be that any restraint upon a business of that character as affecting its rates of transportation must thereby be prejudicial to the public interests." \* \* \*

He also quotes with approval from the dissenting opinion of Judge Shiras, as follows :

"By reason of this marked distinction existing between enterprises inherently public in their character, and those of a private nature, and further by reason of the difference between private persons and corporations engaged in private pursuits, who owe no direct or primary duty to the public and public corporations created for the express purpose of carrying on public enterprises and which, in consideration of the public powers exercised in their behalf, are under obligation to carry on the work intrusted to their management primarily in the interest and for the benefit of the community, it seems clear to me that the same test is not applicable to both classes of business and corporations

in determining the validity of contracts and combinations entered into by those engaged therein."

In the dissenting opinion delivered by Mr. Justice White, it is said :

"In conclusion, I notice briefly the proposition that, though it be admitted that contracts, when made by individuals or private corporations, when reasonable, will not be considered as in restraint of trade, yet such is not the case as to public corporations, because any contract made by them which is in any measure in restraint of trade, even when reasonable, is presumptively injurious to the public interests, and therefore invalid."

The test of reasonableness is not confined to collateral covenants, as held by the Circuit Court of Appeals, but as to whether it shall be applied depends on the nature of the business in which the parties to the agreement are engaged.

Cases still arise involving the validity of restraints imposed on individuals as part of the consideration of sales made by them, but in these the public can have but little interest. When an individual has sold his property or business the community at large can have no more interest in his freedom from restraint than in that of any other person having the same means. Public policy is mostly concerned with the parties in business and the restraints they impose on each other. Hence to limit the test of reasonableness to contracts collateral to sales denies its only important application.

It cannot be disputed that the supply of cast-iron pipe is largely in excess of the demand, and that on account of the peculiar manner in which this pipe is purchased a few of the present manufacturers could fill all the contracts offered; that the measure of restraint as provided by the association was to prevent a ruinous competition and effect a division of the work secured by appellants, and for no other purpose; that the custom peculiar to this trade of purchasing all pipe

by biddings after advertisement prevented the establishment of an ordinary market and pitted all manufacturers against each other on every contract let; that, in the main, all this pipe was bought by other corporations. It is apparent, if not admitted, that the association of appellants saved them from the results of ruinous competition, and that the public has been benefitted, unless its interest would have been subverted by the bankruptcy of some or all of these companies.

## THE ASSOCIATION NOT ILLEGAL OR IMMORAL.

But instead of being the odious thing as argued, and one from which an informer should reap a harvest for betrayal of confidence, the association in question violates no principle of morals or law, and is not new or of unusual character. It is but a division of a certain portion of the gross receipts of each as a means of self-preservation. Aside from the doctrine of *ultra vires*, it is no more immoral or illegal than an ordinary partnership.

It has been held that where the purpose of a contract is *bona fide* to prevent the ruinous consequences of competition, an agreement to divide a portion of the gross receipts among trading firms is not illegal, and does not create a partnership.

Eastman v. Clark, 53 N. H., 276.

Mayrant v. Marston, 67 Ala., 453.

Fay v. Davidson, 13 Minn., 491.

3 Kent, p. 25, notes.

When the purpose is honest, and to save from destruction valuable property through reckless competition, there can be no legitimate complaint against pooling the earnings of rival manufacturers. Under proper circumstances and for lawful

purposes there may be a pooling of receipts without a partnership.

Traffic arrangements are not illegal even though they involve the constitution of a common fund, if the management of the business of each is kept distinct, and there is no delegation of corporate powers to a trust or central committee.

Ray on Contractual Limitations, Sec. 55,  
p. 238 ; Sec. 57, p. 244.

5 Thomp. Pri. Cor., Sec. 6399.

2 Spelling Pri. Cor., Secs. 972, 973.

Mr. Spelling says :

"When, as is sometimes the case, excessive competition has become, or is about to become, ruinous to private parties, which it is to the public interest to prevent rather than to encourage, anti-competitive contracts are reasonable and should be upheld. It is only when such contracts are publicly oppressive that they become unreasonable and should be condemned as contrary to public policy. 'All the cases, ancient and modern agree that a combination, the tendency of which is to prevent general competition and to control prices, is detrimental to the public and consequently unlawful.'"

\* \* \* \* \*

"The law requires that the functions and duties of each corporation shall be performed by its duly constituted officers and agents without interference by those of other corporations. These requirements being met, the stockholders certainly may legally consent that the net profits of each corporation shall constitute a common fund to be shared between the corporations. But in passing upon the validity of such agreements it is important to bear in mind that the franchises and other delegated powers of the corporations cannot be transferred without legislative sanction.

"Where none of these objectionable features are made to appear courts will be very reluctant to interfere with the

agreement on the single ground that it constitutes the companies a copartnership."

By both the English and American authorities there is nothing illegal in an agreement effecting a division of territory, business or customers among competitors, and confining each in his operations to a particular territory, or excluding each from a certain district.

Wickens v. Evans, 3 Younge & Jervis, 318.  
 Nat. Benefit Co. v. Union Hospital Co., 47  
 Minn., 272.  
 Collins v. Locke, L. R., 4 App. Cas., 674.  
 Harriman v. Menzies, Cal., 1896.  
 Hubbard v. Miller, 27 Mich., 15.

## II.

### THE AGREEMENT DID NOT RESTRAIN INTER-STATE TRADE OR COMMERCE.

If the association was illegal, whether as a monopoly or a contract in restraint of trade, it did not restrain interstate trade or commerce as prohibited by the Trust Act.

We quote that part of the opinion of the Court of Appeals in which is stated the conclusion of law and fact making the association a contract in restraint of interstate commerce.

"The second question is whether the trade restrained by the combination of the defendants was interstate trade. The mills of the defendants were situated, two in Alabama, two in Tennessee, one in Kentucky and one in Ohio. The invariable custom in sales of pipe required the seller to deliver the pipe at the place where it was to be used by the buyer, and to include in the price the cost of delivery. The contracts, as the answer of the defendants avers, were invariably made after public lettings at the home, and in the state, of



the buyer. The pay territory, sales in which it was the professed object of the defendants to regulate by their contract of association, included thirty-six states. The cities which were especially reserved for the benefit of the defendants were Atlanta and Anniston, reserved to the Anniston mill, in Alabama; New Orleans and Chattanooga, reserved to the Chattanooga mill, in Tennessee; St. Louis and Birmingham, reserved to the Bessemer mill, in Alabama; Omaha, reserved to the South Pittsburg mill, in Tennessee; Louisville, New Albany and Jeffersonville, reserved to Dennis Long & Co., of Louisville; and Cincinnati, Newport and Covington, reserved to the Addyston mill, in Ohio. Under the agreement, every request for bids from any place, except the reserved cities, sent to any one of the defendants, was submitted to the central committee, who fixed a price, and the contract was awarded to that member who would agree to pay for the benefit of the other members of the association the largest 'bonus.' In the case of the reserved cities, the successful bidder having been already fixed, the association determined the price and bonus to be paid. The contract of association restrained every defendant except the one selected to receive the contract from soliciting (in good faith) or making a contract for pipe with the intending purchaser at all, and restrained the defendant so selected from making the contract except at the price fixed by the committee. In cases of pipe to be purchased in any state of the thirty-six in pay territory, except four, each one of the defendants, by his contract of association, restrained his freedom of trade in respect to making a contract in that state for the sale of pipe to be delivered across state lines: five of them agreeing not to make such a contract at all, and the sixth agreeing not to make the contract below a fixed price. With respect to sales in Ohio, Kentucky, Tennessee and Alabama, the effect of the contract of association was to bind at least three, sometimes four, and sometimes five, of the defendants not to make a contract at

all in those states for the sale and delivery of pipe from another state; and if the job were assigned, as it might be, to one living in a different state from the place of the contract and delivery, its effect would be to bind him not to sell and deliver pipe across state lines at less than a certain price. It thus appears that no sale or proposed sale can be suggested within the scope of the contract of association with respect to which that contract did not restrain at least three, often four, more often five, and usually all, of the defendants in the exercise of the freedom, which but for the contract would have been theirs, of selling in one state pipe to be delivered from another state at any price they might see fit to fix. Can there be any doubt that this was a restraint of interstate trade and commerce?"

After stating the principle decided in *Robbins v. Taxing Dist.*, 120 U. S., 489, *Emert v. Missouri*, 156 U. S., 296, and kindred cases, it is concluded:

"If, then, the soliciting of orders for, and the sale of, goods in one state, to be delivered from another state, is interstate commerce in its strictest and highest sense,—such that the states are excluded by the Federal Constitution from a right to regulate or tax the same,—it seems clear that contracts in restraint of such solicitations, negotiations and sales are contracts in restraint of interstate commerce."

Record, 319, 320.

## ERRONEOUS CONCLUSIONS OF FACT.

We respectfully insist that the decree is founded on a misconception of the facts. *The contract only provided that there should be, on each contract, a bonus for division, and the method of fixing it.* As to general business it made no selection of the company to bid on any contract. As each contract arose the member agreeing to the highest bonus for division

became the selected bidder by virtue of his agreement as to the bonus. In other words, the *direct* purpose of the agreement was to *fix the bonus*, the selection of the member to make the bid resulting *incidentally*.

The effect was different in the few cities known as "reserved cities," as to which there was a concession that certain members should have a right to bid on the contracts these cities might offer. *No article of interstate commerce was the subject of this agreement.*

The selection of one of appellants to make the bid was not the same as "five of them agreeing not to make such a contract at all, and the sixth agreeing not to make the contract below a fixed price." Nor was "the effect of the contract of association to bind at least three, sometimes four, and sometimes five, of the defendants not to make a contract at all in those states (where the plants were located) for the sale and delivery of pipe from another state."

If there had been no association, only one company, the lowest bidder, could secure the contract. All others were excluded as the result of one making the lowest bid. As but one member of the association could in any event secure the contract, the selection of that member could not operate to restrain five or any number of others from securing it. It was but a selection of the one, and not an exclusion of any others.

As the bonus applied to all contracts it would result, if in fixing a bonus in any state where a plant was located that a company from another state was selected, that interstate commerce was promoted, if the argument quoted is sound.

If the whole business of appellants was interstate commerce, then the selection of any member would result in this character of commerce—the only effect being simply a selection.

When the member to bid is agreed on, the others are obligated not to make a lower bid and to aid if necessary in

securing the contract. Then comes the letting of the contract at which all pipe companies are invited to bid. Only one member of the association bids against the outside competition. If this bid is the lowest the contract is awarded in terms and on conditions usually prescribed by some municipal ordinance. To this contract the other members are not parties in any sense. The pipe to be subsequently manufactured, and that might or not be shipped from another state, is the exclusive property of the selling company. It continued the property of this company while it was being manufactured, during the transportation and until delivery and receipt at the place where the contract was let.

The contract was awarded and executed under purely local regulations. In performing it a *transportation* from one state to another would subsequently result if the pipe was manufactured in a state other than that in which it was to be delivered.

To this transportation, if it should take place, and to the pipe that might be transported, the contract of association had no relation whatever. *Its whole purpose was accomplished when the bonus was fixed; it had ceased to operate even indirectly when the contract was awarded.*

It was an agreement regulating the conduct of the parties at local lettings and confined altogether to sellers. While it is true that the individual members were engaged in general trade, the association itself was not engaged in any kind of trade.

We insist, therefore, that the compact of association did not and was not intended to directly restrain interstate trade or commerce.

## **ERRONEOUS APPLICATION OF LAW.**

But the cases cited do not warrant the conclusion reached. The question decided in *Robbins v. Taxing District* is thus

stated by Mr. Justice Bradley: "Whether it is competent for a state to levy a tax or impose any other restriction upon the citizens or inhabitants of other states for selling or seeking to sell their goods in such state before they are introduced therein."

Robbins, as the agent of Cincinnati merchants, was soliciting in Memphis sales of goods to be shipped from Cincinnati to Memphis. This was his only business. The tax on him was a tax on this business of soliciting the sale of goods to be transported from one state to the other, and was therefore a direct burden on or regulation of interstate commerce and might become a prohibition.

The act in question was held illegal because it directly imposed a tax on interstate commerce.

In *Asher v. Texas*, 128 U. S. 129, the Robbins case was reaffirmed and the doctrine again announced "of the unconstitutionality of local burdens imposed upon interstate commerce by way of taxing an occupation directly concerned therein."

Where persons are soliciting the sale of goods on behalf of individuals or firms doing business in another state, their business is a part of interstate commerce.

*Stoutenburgh v. Hennick*, 129 U. S. 148.

The result of these authorities is that no state can levy a tax on interstate commerce in any form, whether by imposing duties on the transportation of articles of that commerce or on the business of carrying on such commerce.

But the rule is different where the business taxed is general.

In *Ficklen v. Shelby County*, 145 U. S. 21, it was held: "Where a resident citizen engages in general business subject to a particular tax the fact that the business done chances to

consist, for the time being, wholly or partially in negotiating sales between resident and non-resident merchants, of goods situated in another state, does not necessarily involve the taxation of interstate commerce, forbidden by the constitution."

The business of the soliciting agent in this case was general and could be taxed, although it include interstate trade. The tax in this case was not a tax on interstate commerce as in the Robbins case.

Brennan v. Titusville, 153 U. S. 289, 307.

In the Robbins case the sales solicited related only to goods to be transported from Cincinnati to Memphis; the sales if made could only be executed by this transportation, which was necessarily in the contemplation of the parties, and was the direct effect and purpose of the contracts solicited. These contracts, as well as the business of the party soliciting them, were parts of interstate commerce, and could not be taxed or prohibited by the States.

But are contracts advertised to be let by municipal or other corporations a part of interstate commerce? No particular seller or source of supply is in contemplation. Any one may bid who can manufacture or have manufactured the character of pipe called for. If the awarding of the contract results ultimately in a transportation, it is by chance and not by design. Nor is the character of the contract to be awarded changed by the fact that some or all the bidders may be non-residents. The advertisements call for bids on pipe of certain specifications, to be delivered at the place where to be used. There is no evidence that the bids made are in the nature of propositions to manufacture and transport the pipe from another state. There could be no evidence of the nature of the bids which, it is decreed, the contract illegally restrained appellants from making. The bidders might or



might not contemplate transportation. But if they did, that would not make the pipe to be thereafter manufactured an article of interstate commerce.

Or, looking at it in another view: The state of Ohio could impose a tax on the firm represented by Robbins, although the business of that firm included the very sales solicited by him and which could not be prohibited by the state of Tennessee. And the states can tax the business of all wholesale firms engaged generally in trade, and this right is "not affected by the variable and adventitious results of business from year to year." So a contract between traders engaged in general business, and fixing a bonus to restrain their competition in all sales that may arise, is not a restraint on interstate commerce, although as a result of their business from year to year, the contract may affect interstate commerce. Such result is not direct but incidental.

Conceding the legal proposition assumed by the Court of Appeals, that a contract between traders restraining them from soliciting interstate trade stands upon the same footing, and is as obnoxious to the interstate commerce clause of the constitution as a law of a state regulating or prohibiting interstate commerce, still the case is not supported by the authorities cited, because appellants were not engaged in interstate trade, and their contract of association related to their general business, and if in working it out it operated on interstate commerce, it was by chance, *and because appellants subsequently engaged in such commerce.*

A person who is taxed by the state or restrained by his own contract has just the same right to engage in interstate trade as the person who is free from the tax or restraint.

## CONTRACTS AS OBSTRUCTIONS TO INTER-STATE COMMERCE

But we deny that the commerce clause of the constitution applies alike to the contracts of parties and to state legislation.

In construing this clause of the constitution this Court in State Freight Tax Case 82 U. S. 32, said: "A power to prevent embarrassing restrictions by any state was the thing desired." And in the Robbins case Mr. Justice Bradley expressed the same idea. "In the matter of inter-state commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems." Whenever, wherever or however state legislation directly interferes with the free flow of commerce from one state to another, it conflicts with this provision of the constitution. If such legislation prevents the soliciting or making of contracts directly involving such commerce it is a regulation thereof, an interference therewith and therefore inoperative

All contracts and negotiations which have been held to constitute a part of interstate commerce are so only in the sense that they can not be prohibited by the states. This is the end of the regulating power of Congress. So far as concerns the parties to the contracts or negotiations, they are left free from the interference of either national or state law.

It is substantially a different thing whether a state prohibits a person from making a contract or whether the person by his own contract restrains himself. In the one case there is prohibited the freedom of contract, and if the subject matter is interstate commerce the legislation is avoided by the commerce clause of the constitution; in the other there is exercised the liberty of contracting, even though by the

terms of the contract the right of buying or selling is in a measure restrained or regulated.

The commerce clause of the constitution only operates to guarantee, as against state legislation, the liberty of citizens in negotiating and making contracts between themselves for the transportation of commodities from one state to another, and for this purpose avoids legislation that in any manner burdens or regulates this liberty of the citizens; but it was not intended that that clause of the constitution should furnish the limit and measure of the citizen's rights in making or negotiating these contracts.

Interstate commerce existed before the adoption of the constitution and exists now under the same laws. All commercial contracts are made under and rest on the laws of the states. Their right to be so made is the full purpose of the clause of the constitution in question. It is stated in *Gibbons v. Ogden* "that the constitution does not confer the right of intercourse between state and state. That right derives its source from those laws whose authority is acknowledged by civilized man throughout the world." We insist, therefore, that while there is guaranteed by the constitution the right of making the contracts, the contracts themselves, as between the parties thereto and affected thereby, are to be interpreted by the laws under which they are made and on which they rest.

The validity of state legislation regulating commerce is determined by this clause of the constitution; the validity of contracts between private parties, as they are not regulations of commerce, is determined by the laws under which they are made.

It was said by Mr. Justice Peckham in *Hopkins v. United States*, 171 U. S. 578, 602:

"We say nothing against the constitutional right of each

one of the defendants and each person doing business at the Kansas City stock yards to send into distant states and territories as many solicitors as the business of each will warrant. This original right is not denied or questioned. But cannot the citizen, for what he thinks good reason, contract to curtail that right? To say that a state would not have the right to prohibit a defendant from employing as many solicitors as he might choose, proves nothing in regard to the right of individuals to agree upon that subject in a way which they may think the most conducive to their own interests. What a state may do is one thing, and what parties may contract voluntarily to do among themselves is quite another thing."

In the same case it was argued in behalf of the complaint that an agreement among the members of the exchange to abstain from telegraphing in certain circumstances and for certain purposes, was an attempt to regulate the sending of messages. But it was said that an agreement among business men not to send telegrams in regard to their business in certain contingencies, where the agreement is entered into only for the purpose of regulating the business of the individuals, is not a direct attempt to affect the business of the telegraph company. The distinction is thus stated:

"The argument of counsel in behalf of the United States, that because none of the states or territories could enact any law interfering with or abridging the right of persons in Kansas or Missouri to send prepaid telegrams of the nature in question, therefore an agreement to that effect entered into between business men as a means toward the proper transaction of their legitimate business would be void, is, as we think, entirely unsound. The conclusion does not follow from the facts stated. The statute might be illegal as an improper attempt to interfere with the liberty of transacting legitimate business enjoyed by the citizen, while the agreement among business men for the better conduct of their

own business, as they think, to refrain from using the telegraph for certain purposes, is a matter purely for their own consideration. There is no similarity between the two cases, and the principle existing in the one is wholly absent in the other. The private agreement does not, as we have said, regulate commerce or impose any impediment upon it or tax it. Communication by telegraph is free from any burden so far as this agreement is concerned, and no restrictions are placed on the commerce itself."

Upon Congress is conferred the exclusive power to regulate commerce among the states. Nothing invades this exclusive province of Congress unless it be something that directly regulates the commerce committed to its jurisdiction. State legislation is a regulation, and whenever it burdens or prohibits this commerce is unconstitutional and void. *But an agreement confined to six manufacturers, which simply fixes, as among themselves, the terms upon which they will engage in general commerce is not a regulation of any commerce, and especially not of that commerce which Congress alone may regulate.*

Contracts by which a few manufacturers stipulate among themselves not to bid on contracts except on certain terms and under certain regulations controlling the action of each, do not, as stated, *regulate* commerce; nor are they illegal, even though they fix prices at which the parties must sell their goods.

Deuber Watch Case Mfg. Co. v. Howard,  
35 U. S. App. 16.

Macauley v. Tierney, 33 At. L. R. 1-4.

Manufacturing Co. v. Hollis, 54 Minn. 223.

If such agreements are illegal they are so only because in conflict with the principles of the law on which they are founded.

## SCOPE OF INTERSTATE COMMERCE.

But even if we admit that such contracts *regulate* commerce, when do they come within the jurisdiction of Congress?

"It is the stream of commerce flowing across the states, and between them and foreign nations, that congress is authorized to regulate. To prevent direct interference with or disturbance of this flow alone, was the power granted to the federal government. Congress has, therefore, no authority over articles of merchandise or their owners, or contracts or combinations respecting them, which have not entered into this stream, or having entered, have passed out. It may prohibit and punish all acts that are intended and directed to restrain or otherwise interfere with or disturb such commerce, but it can go no further."

U. S. v. E. C. Knight Co., 60 Fed. R. 306, 309.

Interstate commerce and the regulating power of Congress commences when the commodity is delivered for transportation to a common carrier and ceases when the commodity is delivered at its destination and becomes mingled with the general mass of property in the other state.

Brown v. Maryland, 12th Whea. 419.

State Frt. Tax Case, 82 U. S. 272.

Coe v. Errol, 116 U. S. 225.

Kidd v. Pearson, 128 U. S. 128.

Williams v. Missouri, 91 U. S. 275.

The fact that an article is manufactured for export does not of itself make it an article of commerce, and the intent of a manufacturer does not of itself make it an article of interstate commerce, or determine the time when the article passes from the control of the state and belongs to commerce.



This is so ruled in *Coe v. Errol*, 116 U. S. 517-525, in which the question before the court was whether certain logs, cut at a place in New Hampshire and hauled to a river town for the purpose of transportation to the state of Maine, were liable to be taxed like other property in the state of New Hampshire. Mr. Justice Bradley, delivering the opinion of the court, said :

"Does the owner's state of mind in relation to the goods (that is, his intent to export them and his partial preparation to do so), exempt them from taxation? There must be a time when they cease to be governed exclusively by the domestic law and begin to be governed by the national law of commercial regulations. And that moment seems to be a legitimate one when they commence their final movement from the state of their origin to that of their destination."

*U. S. v. Knight*, 156 U. S., 13-14.

*Coe v. Errol*, 116 U. S., 517-525.

*In Re Green*, 52 Federal Reporter, 104-114.

The precise point of time when the goods pass from under the protection of the national law of commercial regulations and come under the protection of domestic law where shipped is, of course, when they become commingled with the mass of property in the latter state, and this is when they arrive at their place of destination for use or trade before being landed, unloaded or sold.

But contracts to be a part of interstate commerce must be connected with or relate to the transportation of an article of commerce from one state to another, and contracts not so connected or related are no part of interstate commerce in the constitutional sense that they may be regulated by Congress.

The case of *Paul v. Virginia*, 8 Wall, 183, fully illustrates this principle.

Mr. Justice Field, in delivering the opinion of the court in that case, said :

"The policies are simple contracts of indemnity. They are not articles of commerce in any proper meaning of the word \* \* \* They are not commodities to be shipped or forwarded from one place to another. They are like personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different states. The policies do not take effect—are not executed contracts until delivered by the agent in Virginia. They are then local transactions and are governed by local law. They do not constitute a part of the commerce between the states any more than the purchase and sale of goods in Virginia by a citizen of New York, while in Virginia, would constitute a portion of such commerce."

It follows from these cases that if a citizen of Tennessee goes to New York, and while there buys a stock of goods, the contract is no part of interstate commerce, and this is so, although at the time he purchased them, he intended to ship them to the State of Tennessee, because the owner's state of mind or his intention to ship the goods do not make them a part of interstate commerce, as before shown, until delivered to the common carrier for shipment. Therefore the contract of purchase, which in point of time, is anterior to the delivery of the articles bought to the common carrier, and which has no connection with or relation to the transportation of the goods, is not and cannot be a part of interstate commerce.

On the other hand it is equally well settled that if a citizen and resident of the State of Tennessee ship a carload of coal to the State of New York for the purpose of selling it there—on arrival at its destination, the place where it is to be sold or used, it becomes intermingled with the mass of property in that State, and passes from under the protection

and regulating power of Congress to the protection of the laws of the State of New York, and any contract of sale made of it would be wholly local and no part of interstate commerce.

Emert, v. Missouri, 156 U. S., 296.

In *United States v. E. C. Knight Co.*, 156 U. S. 1, 16, after stating that the regulation of commerce was the prescribing of rules for carrying it on; that "the power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly;" and after determining, on the rule announced in *Coe v. Errol* and *Kidd v. Pearson*, "at what point in the course of the trade in or manufacture of commodities the statute may have effect upon them, or upon contracts relating to them", it was said:

"It was in the light of well settled principles that the act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the states or citizens of the states in the acquisition, control or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof, should be sold; or to make criminal the acts of persons in the acquisition and control of property which the states of their residence or creation sanction or permitted."

And it was held that a monopoly in the manufacture of sugar did not come within the provision of the act, because it did not directly restrain or monopolize interstate commerce as defined.

Nor does the statute refer to contracts or combinations as such, or unless they directly restrain interstate commerce as defined in that case.

The contract of appellants makes no reference to shipments or transportation or to any specific pipe. It does not

relate to commodities of commerce, and especially to such commodities while subject to the regulating powers of Congress.

The association considered as a contract has no reference, either directly or indirectly, to commodities in the course of transportation or while subject to the regulating power of Congress. The whole object of the association was to regulate the conduct of its members at these local lettings. Its operation ended there. If interstate commerce followed or resulted from the local lettings, it was in no way controlled or restrained by the association, which had already spent its force when the contract was let.

Again, if the association was more than a mere rule of conduct as stated, and had reference to commerce, it was to commerce *generally* and not to any special commerce, either domestic or interstate. These observations include as well the provisions relating to "reserve cities," as to which, if there was any restraint, it was partial and limited, and neither more direct than that caused by the sugar monopoly, which prevented trade not only with a few, but with all cities.

As to the question of a monopoly, it was charged that defendants had effected a complete control of the trade in what was described in the bill as "pay territory," or the thirty-six states named. This included most of the United States. It was argued that because some of defendants had an advantage in freight rates in some limited localities that this proved the charge as made. But this was not charged in the petition.

In the very nature of things, and from the situation of the parties, there could have been no monopoly on account of advantages in freight rates, which would be necessarily very limited in effect and nothing like co-extensive with the territory specified.

Because the total amount of bonuses to be paid on every contract secured was determined by the amount of actual shipments, in no manner restrained or affected the shipments. Long before there was any shipment at all, the contract, to the securing of which alone the rules of the association related, had been secured and passed from the control or operation of the organization, to the control of the member securing it. The organization concerned itself only with contracts to be let, and not with contracts beyond the letting or any shipments that might follow. The shipment was in no manner controlled by the association, but by the contract secured by the particular member.

The association itself could not operate or be applied either to domestic or inter-state commerce without the intervention of a contract between one of the defendants and a consumer, and this contract is necessarily interposed between appellants as an association and the shipment or transportation of the pipe, which is necessary to make the transaction inter-state commerce; consequently the contract of association, so far as it affects the inter-state commerce involved, would be indirect.

*A contract to directly affect inter-state commerce must itself relate to that commerce, and could not do so if it required the intervention of a second contract to reach its object.*

It is asked in this case that appellants be declared guilty under the act of Congress, because it is alleged that they are members of an association that restricts their right to sell to citizens of other states, and because the association as a contract stands in the way of making other contracts that would be parts of inter-state commerce if made. The case would be the same if instead of alleging a combination or association, appellee had charged the existence of a partnership among appellants having reference to general commerce.

Could the association, or could a partnership with the same objects, be dissolved in order that other contracts might be made that might result in inter-state commerce?

### III.

IF CONSTRUED TO REFER TO AND INCLUDE SUCH CONTRACTS AS EXISTED BETWEEN APPELLANTS, THE TRUST ACT OF JULY 2, 1890, IS VOID, (1) BECAUSE NOT AUTHORIZED BY THE COMMERCE CLAUSE OF THE CONSTITUTION, AND (2) BECAUSE IN CONFLICT WITH THE FIFTH AMENDMENT TO THE CONSTITUTION.

#### *FIRST.*

Under the Commerce Clause Congress has only the exclusive power to regulate inter-state commerce.

Nothing can be an invasion of this exclusive power unless it amounts to a regulation or such a direct obstruction as prevents regulation. This, we think, is established by cases already cited.

The government of the Union derives its powers from the people, and exercises them on and for the benefit of the people; and within the sphere of its delegated powers the laws of the United States are by express declaration, and ought to be, the supreme law of the land. But to be constitutional an Act of Congress must be authorized, as has been frequently decided.

The Fourteenth Amendment provides that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person, of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Congress being authorized by appropriate legislation to enforce this amendment, passed an act in effect declaring



that all persons of color should have the same privileges and accommodations enjoyed by others in all inns and public conveyances. It was held by this court that the act was unconstitutional, and the power conferred on Congress was thus defined :

“To adopt appropriate legislation for correcting the effects of such prohibited state laws and state acts, and thus to render them effectually null, void and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of state legislation ; but to provide modes of relief against state legislation, or state action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights ; but to provide modes of redress against the operation of state laws, and the action of state officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment ; but they are secured by way of prohibition against state laws and state proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect ; and such legislation must necessarily be predicated upon such supposed state laws or state proceedings, and be directed to the correction of their operation and effect. \* \* \* \* \*

“Of course, legislation may, and should be, provided in advance to meet the exigency when it arises ; but it should be adapted to the mischief and wrong which the amendment was intended to provide against ; and that is, state laws, or state action of some kind, adverse to the rights of the citizen secured by the amendment. Such legislation cannot properly cover the whole domain of rights appertaining to life, liberty and property, defining them and providing for their vindication. That would be to establish a code of municipal law

regulative of all private rights between man and man in society. It would be to make Congress take the place of the state legislatures and to supersede them. It is absurd to affirm that, because the rights of life, liberty and property (which include all civil rights that men have), are by the amendment sought to be protected against invasion on the part of the State without due process of law, Congress may therefore provide due process of law for their vindication in every case; and that, because the denial by a state to any persons, of the equal protection of the laws, is prohibited by the amendment, therefore Congress may establish laws for their equal protection." \* \* \* \*

"If this legislation is appropriate for enforcing the prohibitions of the amendment, it is difficult to see where it is to stop. Why may not Congress with equal show of authority enact a code of laws for the enforcement and vindication of all rights of life, liberty and property? If it is supposable that the states may deprive persons of life, liberty and property without due process of law (and the amendment itself does suppose this), why should not Congress proceed at once to prescribe due process of law for the protection of everyone of these fundamental rights, in every possible case, as well as to prescribe equal privileges in inns, public conveyances and theatres? The truth is, that the implication of a power to legislate in this manner is based upon the assumption that if the states are forbidden to legislate or act in a particular way on a particular subject, and power is conferred upon congress to enforce the prohibition, this gives congress power to legislate generally upon that subject, and not merely power to provide modes of redress against such state legislation or action. The assumption is certainly unsound. It is repugnant to the Tenth Amendment of the Constitution, which declares that powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people."

Civil Rights Cases, 109 U. S., 3, 11, 13, 14.

This amendment as construed authorized no law making the acts of individuals criminal.

While it is said that the commerce clause differed in this respect from the amendment under consideration, there was no decision to this effect, and especially not as to the extent of the difference. And the principle of that case and others does limit the power of congress to the regulation of that commerce, which before the adoption of the constitution and since, had an independent existence; and it leaves the whole police power on the subject in the states.

As said in *Gilman v. Philadelphia*, 3 Wall, 713, 725, quoted by Mr. Justice Brewer In *Re Debbs*, "Wherever 'commerce among the states' goes, the power of the nation, as represented in this court, goes with it to protect and enforce its rights."

It is the free flow of the streams of commerce among the states that Congress is empowered to protect. Every law of the state which, by taxation or otherwise, burdens or restricts this commerce or discriminates against it, is void as an invasion of the exclusive power of Congress. And there is another large class of subjects on which the power acts directly.

The channels through which this commerce flows, whether the natural or artificial ones, are subject to the exclusive control and regulation of Congress, because as essential to its existence as protection against hostile legislation.

All navigable rivers and interstate highways, such as railroads, and the means of interstate communication, as telegraph and telephone lines, are and should be subject alone to this regulation and control, otherwise Congress would be powerless to regulate commerce or to prevent its paralysis by independent agencies.

When the mob was organized in Chicago of such proportions that it could and did, by violent means, check all that

commerce which flowed to, from and through that great city, if the National government had not the power to remove the obstruction, then similar means might have been used in all other towns and cities, for any length of time, and all interstate commerce effectually blocked.

Of the bill entertained in the Debbs case it was said. "The scope and purpose of the bill was only to restrain forcible obstructions of the highways along which interstate commerce travels and the mails are carried." But "the right of any laborer or any number of laborers, to quit work was not challenged."

In Re Debbs, 158 U. S. 564, 598.

Congress may therefore legislate with reference to the acts of individuals that actually obstruct transportation from one state to another, but to what extent is not decided.

Whether power under this clause is exercised to prohibit state action, or to restrain mob violence, the purpose in either case is the same—to protect the freedom of the citizen in carrying on commerce among the states.

But we insist that notwithstanding the power of Congress to protect commerce against legislation that regulates it, and against the acts of individuals that actually obstruct its highways, there is still no right under the commerce clause of the constitution to control the conduct of individuals in making, or refraining from making, or in limiting by agreement their power to make, the contracts which originate this commerce. There is protected the right to make contracts of purchase or sale, under and according to the laws of any state, and there is guaranteed from actual obstruction, whether by the state or individuals, the transportation incident thereto.

But these contracts are always made under the law of the state, which is always the *lex loci contractus*, and the test of their validity. No other law can determine the capacity of

the parties, the terms of their contracts or the extent to which they may bind themselves.

"Matters bearing upon the execution, the interpretation and the validity of a contract are determined by the law of the place where the contract is made."

Scudder v. Union Nat. Bank, 91 U. S., 406, 413.

2 Par. on Contracts (8 ed.), p. 576-7.

It was not the intent of the commerce clause of the Constitution that Congress should take possession of the subject of contracts, supersede and displace state legislation on the same subject, and furnish a system of laws as the foundation of all commercial contracts.

This is much beyond a power to protect the right of making contracts under state laws, or to protect that commerce which the Constitution found in existence. It is an exercise of the police power which under the Constitution remains in the states.

Cooley's Constitutional Limitations, p. 706 and cases cited.

To illustrate: Any six merchants of Memphis might have bound themselves by agreement to buy all their goods from factories or wholesale merchants in Tennessee, and not to buy from firms outside the state. Such agreement might have been made for the express purpose of favoring domestic trade. Or they might have agreed to buy from St. Louis instead of Cincinnati. They could also for their mutual good have bound themselves by contract not to buy from any drummers soliciting sales of goods to be transported from other states without consulting and agreeing among themselves as to the prices to be offered. For the same reason any six wholesale shoe houses, although doing business in different states, could agree not to sell at all for transportation into certain other states, or not to sell except at prices to be agreed on whenever an order was received. They could

agree to discriminate in favor of domestic commerce. The direct effect of these agreements would be to keep such parties out of inter-state commerce and to that extent restrain it, but inasmuch as there is no obligation under the National Constitution to enter it, there could be no violation to agree to remain out or only to engage in it on certain terms.

It may also be said that if a merchant in Tennessee agrees to sell goods to be transported to New York, or to buy goods on order to be shipped from there, he could refuse to deliver or decline to receive them without violating any law of the Union. Congress could not by statute provide for damages on breach of such contract or for their specific performance.

Congress may and has exercised the police power over the *instruments* or *agencies* of interstate commerce, and, in doing so, may prescribe the regulations in detail and operate directly on individuals. It can authorize the incorporation of such instrumentalities as it has done. But it is not granted the right by any clause of the constitution to provide by law for licensing trade or traders, for regulating the business relations between man and man, or for determining the legality of the business arrangements or business methods of those who may engage in trade. All these subjects of legislation fall within the police power of the states.

United States v. DeWitt, 9 Wall, 41.

License Tax Cases, 5 Wall, 462.

In Re Rahrer, 140 U. S. 545.

Paterson v. Kentucky, 97 U. S. 501.

It must follow, therefore, that whether a particular business, or combination in business, or monopoly or contract in restraint of trade, is lawful or illegal, depends on an application and interpretation of the police power of the states.

If a person is engaged in shipping goods from one state to another under contracts secured for that purpose, it is not



within the province of Congress to determine the legality of the methods by which the contracts were secured or whether the trader was engaged in business under an illegal combination. If so it could not be said that Congress can not deal with monopolies as such, because to prohibit them from making contracts, and the interstate shipments incident thereto, is equivalent to declaring them illegal.

The state or municipal law is the test of the validity of these contracts and all others in which the parties combine or form an association for the control of their own business or conduct only, and create no restraint or obstruction to the flow of interstate commerce except what results from the exercise of their option to refrain from it. And this must be true even though there is direct restraint against making contracts that would, if made, be parts of interstate commerce, or against making them except under agreed conditions and at fixed prices. Such contracts are wholly unlike in their effects, legislation which prohibits them.

Hopkins v. United States, *Supra*.

If such contracts are condemned by the Trust Act, then this statute, as already stated, does deal with monopolies and contracts as such, and is an invasion of the reserved rights of the states.

United States v. E. C. Knight Co., 156  
U. S., 1.

Only those laws of Congress made in pursuance of the Constitution are valid. Hence if the contract of appellants, by which they agreed to restrain themselves or to regulate their rights in making contracts to manufacture pipe to be transported into other States, is within the terms of the Trust Act, that act is unconstitutional unless the commerce clause is the source from which individuals derive their power to make commercial contracts.

The act so construed is not appropriate to the regulation of interstate commerce, which exists in full freedom whether

or not private traders are by their contract directly restrained from participating in it, or permitted to participate only on certain conditions.

It was held by the Circuit Court of Appeals that by force of the association formed by appellants "each one of the defendants, by his contract of association, restrained his freedom of trade in respect to making a contract \* \* \* for the sale of pipe to be delivered across state lines," and that this was illegal and criminal under the Trust Act.

We might admit, as held by the Circuit Court of Appeals, "that an agreement between intending bidders at a public auction or a public letting not to bid against each other, and thus to prevent competition is a fraud upon the intending vendor or contractor, and the ensuing sale will be set aside."

But the association of appellants was for the purpose of fixing bonuses, and applied to all the business of each. It only resulted incidentally that it regulated the conduct of each at lettings. And it may also be said that unless a contract limiting competition is of itself unreasonable and void, it is not made so because all purchasers choose to buy pipe after advertising for bids. The principle stated applies only to sales required by law to be made in that manner.

But aside from the rules which distinguish the agreement of appellants from a combination between "intending bidders" at a public sale, and which distinguish the purchase of pipe at the customary lettings from public sales, can it be said that under the commerce clause of the Constitution Congress would be vested with the power to regulate public sales and declare criminal the conduct of bidders thereat? Not only so, but to furnish the purchaser a right to damage if the contract is secured and performed by the transportation of pipe from another state? To so hold would displace the whole police power of the state, which simply avoids the contract at the option of the purchaser, and substitute therefor

a criminal statute providing also for a penalty in favor of the purchaser.

The United States Courts would either be compelled to furnish new remedies instead of those provided by local laws, or else to enforce the contract and bond as made under the municipal law of the state.

## *SECOND.*

The Act of July 2, 1890, declares that parties making the contracts thereby prohibited are guilty of a misdemeanor and subject to a fine not exceeding \$5,000.00, or to one year's imprisonment, or both, in the discretion of the court.

It also provides that any person injured in his business or property, by reason of the contracts forbidden or declared unlawful, shall recover three fold the damage by him sustained.

If this statute includes the contracts of persons restraining competition among themselves in their private business, then it results that mere agreements among persons engaged in private business not to contract with others, or not to contract except on agreed terms, subjects such persons, (1) to criminal charges and penalties, and (2) to liability in three fold damages to parties with whom there might be no contract relation and who would be in no manner directly injured.

Or if these damages to purchasers only accrue in cases where they have made purchases from the manufacturers, then the effect of the statute is to avoid the manufacturer's rights in and under contracts voluntarily made and to substitute therefor criminal liability and heavy penalties.

In other words, manufacturers who agree among themselves not to sell to others or not to sell except on certain conditions, by this construction of the statute become crimi-

nals and subject to heavy fines and imprisonment, and liable in damages to parties whom they have not wronged, unless it be a wrong to restrain the right of contracting.

And if it be held not only that the statute includes such contracts but renders them illegal, whenever they restrain competition, whether the restraint is reasonable or not, then manufacturers are declared criminals, and liable in damages to third parties not injured, for making contracts necessary to save from destruction property that is their own used exclusively in their private business.

Now assuming that it was the purpose of the commerce clause of the constitution to vest in Congress a general police power, and to displace state legislation as the foundation of the right to make commercial contracts, the Trust act as construed would be unconstitutional under the Fifth Amendment.

This amendment is a limitation on the power of Congress.

*Barrow v. Baltimore*, 7 Pet. 243.

Even when exercised under the commerce clause.

*Monongahela Nav. Co. v. United States*,  
148 U. S. 312.

We admit the principle that whenever property has been devoted to a public use, or clothed with a public interest, the government having jurisdiction may regulate the charges for its use; and this right of regulation in the government is inconsistent with the owner's freedom in contracting with respect to its use, or the price of its use.

The principle as announced in *Munn v. Illinois*, the leading American case on this subject, is, that "when the owner of property devotes it to a public use, he in effect, grants to the public an interest in such use, and must to the extent of the use, submit to be controlled by the public, for the common good, as long as he maintains the use."

The interest of the public in the use is the foundation and limit of the right to regulate the owner's control.

But under our system of government there is no power conferred "upon the whole people to control rights which are purely and exclusively private."

The distinction was thus expressed by Mr. Chief Justice Waite :

"Undoubtedly, in mere private contracts, relating to matters in which the public has no interest, what is reasonable must be ascertained judicially. But this is because the legislature has no control over such a contract. So, too, in matters which do affect the public interest, and as to which legislative control may be exercised, if there are no statutory regulations upon the subject, the courts must determine what is reasonable. The controlling fact is the power to regulate at all."

Munn v. Illinois, 94 U. S. 134.

In *Budd v. N. Y.*, 143 N. Y. 517, 532, this court endorsed as sound and just the following principles affirmed by the Court of Appeals of New York :

"It affirmed that, while no general power resided in the legislature to regulate private business, prescribe the conditions under which it should be conducted, fix the price of commodities or services or interfere with freedom of contract, and while the merchant, manufacturer, artisan and laborer, under our system of government, are left to pursue and provide for their own interests in their own way, untrammelled by burdensome and restrictive regulations, which however common in rude and irregular times, are inconsistent with constitutional liberty, yet there might be special conditions and circumstances which brought the business of elevating grain within principles which, by the common law and the practice of free governments, justified legislative control and

regulation in the particular case, so that the statute would be constitutional."

These decisions as explained and emphasized in the dissenting opinions limit the right of legislative control over private property and business to such property and business as is subject, on account of its uses, to public regulation.

But the full extent of governmental supervision over "rights which are purely and exclusively private," is thus stated by Mr. Justice Brewer in the dissenting opinion in *Budd v. New York*, 143 N. Y. 550.

"Surely the matters in which the public has the most interest, are the supplies of food and clothing; yet can it be that by reason of this interest the state may fix the price at which the butcher must sell his meat, or the vendor of boots and shoes his goods? Men are endowed by their Creator with certain unalienable rights: life, liberty and the pursuit of happiness; and to secure, not grant or create these rights, governments are instituted. That property which a man has honestly acquired he retains full control of, subject to these limitations: First, that he shall not use it to his neighbor's injury, *and that does not mean that he must use it for his neighbor's benefit*; second, that if he devotes it to a public use, he gives to the public a right to control that use; and third, that whenever the public needs require, the public may take it upon payment of due compensation."

There can be found no better statement of the constitutional limitations on governmental control of private business than in the dissenting opinion in these cases in this court and in the New York Court of Appeals in the *Budd* case.

In *Dueber Watch Case Mfg. Co. v. Howard Co.*, 35 U. S. App. 16, the following principles are announced without dis-



sent. Lacombe, Circuit Judge for the Court of Appeals of the Second Circuit, said:

"Each one of the defendants had an undoubted right to determine for himself the price at which he would sell the goods he made, and he certainly does not lose that right by deciding to sell them at the same price at which a dozen or so of his competitors sell the goods which they make. Collectively the defendants owe no duty to anyone of their competitors to regulate the price they fix for their goods so as not to interfere with the price he fixes for his own.

\* \* \* \* \*

"An individual manufacturer or trader may surely buy from or sell to whom he pleases, and may equally refuse to buy from or sell to anyone with whom he thinks it will promote his business interests to refuse to trade. That is entirely a matter of his private concern, with which governmental paternalism has not as yet sought to interfere, except when the property he owns is 'devoted to a use in which the public has an interest;' and such public interest in the use has as yet been found to exist only in staple commodities of prime necessity. 94 U. S. 113; *Budd v. New York*, 143 U. S. 517; 12 Sup. St. 468."

Judge Wallace placed his dissent upon the ground that the combination among defendants was designed to injure the business of a rival manufacturer, and thus unlawfully restrain interstate commerce. He recognized the right of defendants to agree among themselves as to their own sales if there had been no purpose to injure the trade of others.

A number of manufacturers, who are so situated that no single purchaser is under the necessity of buying from them, or can legally require them to sell to him, may certainly agree among themselves as to the control of their own property and business, and the prices on their line of goods, without being guilty of a criminal conspiracy, or incurring a liability for

damages to those whose only injury consists in the fact that their opportunity of purchasing is limited by this agreement among the manufacturers.

There is no purpose or tendency in such an agreement to injure any trade, or the business of any person, as is essential in criminal conspiracies. It would be no more criminal or illegal than if the same parties mutually agreed to retire from business altogether, or if certain ones, or all but one agreed to do so.

The weight of authority is that such agreements are valid and enforceable, even between the parties, if reasonable under the circumstances of the particular case.

Whether a contract of association is contrary to public policy and therefore illegal or criminal, depends, as we have attempted to show, on a construction of the municipal law under which it is made and which prescribes the limitations on the capacity and right of the parties to contract.

If the association is legal, according to this test, the contracts of its members are valid under the laws of the state, and the interstate transportation incident thereto can not be prohibited without impairing the obligation of a legal contract. And whether or not an association of manufacturers and the contracts made by its members are invalid must be determined judicially.

We contend, therefore, that Congress regulates private business whenever by legislative enactment it declares void every combination or contract in restraint of trade among manufacturers engaged in selling for transportation into other states, and gives a threefold measure of damages to any person who has paid more for a commodity by reason of the association.

By this enactment, as it has been construed, Congress makes illegal, in their application to interstate commerce, a great number of business arrangements and contracts, that may be legal in respect to all the internal commerce of the states.

The Act, in so far at least as it declares illegal and criminal every such contract of citizens engaged in strictly private business, denies their rights of personal liberty, including the right to contract and control their own affairs as guaranteed by the Fifth Amendment of the Constitution.

And in requiring persons who have made such contracts to respond in threefold damages to parties to whom they have sustained no contract relation, or only such as were voluntarily and legally assumed, and on whom they have inflicted no actual injury, is a taking of property without due process of law, contrary to the same amendment.

Such power does not exist in Congress unless it be assumed that there is a right in the government under the constitution to regulate the business of all persons engaged in trade, or the manufacture of commercial articles.

To hold that congress may exercise the police power under the commerce clause, and that in doing so it may regulate the conduct, contracts, and business of citizens engaged in strictly private business, if they involve interstate commerce, is the assumption of a jurisdiction that includes most there is of importance in the affairs of the American people.

**FOSTER V. BROWN,**  
**FRANK SPURLOCK,**  
Attorneys for Appellants.





*No. 51*

*The United States Circuit Court of Appeals for the Sixth Circuit*

*By J. Warrington*

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Supreme Court of the United States.

OCTOBER TERM, 1908.

*Filed April 24, 1909.*

*The Addyston Pipe and Steel Company, Dennis  
Long & Company, Anniston Pipe and Foundry  
Company, South Pittsburgh Pipe Works,  
and Chattanooga Foundry and Pipe Works,*  
*Appellants,*

No. 229.]

vs.

*The United States,*

*Appellee.*

Appeal from the United States Circuit Court of Ap-  
peals for the Sixth Circuit.

BRIEF FOR THE ADDYSTON PIPE AND STEEL  
COMPANY.

JOHN W. WARRINGTON,

*Of counsel for Addyston Pipe and Steel Co.*

PAXTON, WARRINGTON & BOUTER,

*Counsel.*





# Supreme Court of the United States.

OCTOBER TERM, 1898.

*The Addyston Pipe and Steel Company, Dennis  
Long & Company, Anniston Pipe and Foundry  
Company, South Pittsburgh Pipe Works,  
and Chattanooga Foundry and Pipe Works,*  
*Appellants,*

No. 269.]

*vs.*

*The United States,*

*Appellee.*

Appeal from the United States Circuit Court of Appeals for the Sixth Circuit.

## BRIEF FOR THE ADDYSTON PIPE AND STEEL COMPANY.

### STATEMENT.

In view of the extended statement made by Mr. Brown and Mr. Spurlock, of the issues as made by the pleadings, and of the character and tendency of the evidence, we deem it unnecessary to do more in this regard than to state what we conceive to be the last analysis of the evidence.

The most that can be said of the arrangement which is made the basis of this action is that the appellants as owners of private manufacturing establishments, entered into a plan or scheme for profit with respect to the manufacture and sale

of an ordinary private product; that according to this plan some of the members would not manufacture for certain persons, or sell to them under certain conditions—they could not afford to; and in pursuance of a manifest purpose to supply at reasonable prices the fullest demand for cast-iron pipe, designated members from time to time so to supply this demand and required them respectively to set apart a certain sum of money to be divided in certain proportions among all the members.

It is to be observed in the first place that the members were not, as alleged in the bill, the only manufacturers, or even substantially so, within the territory in question; but on the contrary they were less than half, considered according to the capacity of the foundries, and, as we maintain, less than a third of their class in the country at large. And in the next place the manufactured article in question, cast-iron pipe, was not one devoted to any public use or in which the public had an interest, any more than it had in any other article of purely private manufacture. There was no provision, not even a suggestion, made in respect of the traffic rates of any common carrier. There was no provision or suggestion to reduce the manufacture of cast-iron pipe or to impair the demand for it or use of it, and its operation did not in fact do so. It is true that the plan under which the members were working at the time of the commencement of this cause looked to the fixing of prices from time to time in the future, according to the circumstances attending each particular sale and delivery of cast-iron pipe; that is to say, the plan provided for taking into account the cost of iron, labor and other items entering into the expense of manufacturing cast-iron pipe, together with the competition to be encountered. In short, aside from the union of the several interests, the plan contemplated only a resort to such means and advantages as are usually and rightfully employed by every manufacturer or merchant to protect his private busi-

ness interests. If the execution of the plan would affect interstate trade or commerce at all, that certainly was not the purpose or intent, and such effect was at most only indirect and remote.

The question then comes to this:

Whether under the right of congress to regulate commerce among the states, citizens of a state, who are severally engaged in similar private business, may, without intending to restrain interstate trade or commerce, or to affect traffic rates, unite their interests under an arrangement which shall merely restrict fatal competition among themselves, but shall not restrict competition generally or even substantially, and so secure reasonable prices at which alone they are willing to dispose of their particular products or goods.

The far-reaching effects of a denial of such a right are both manifold and obvious. If manufacturers could not do so, then no sort of producers or merchants could enter into such an arrangement, no matter how small in number or how slightly or indirectly its execution would restrain interstate trade or commerce. Farmers could not do so in respect of wheat, corn or other cereals grown upon their separate farms for their own profit or even livelihood; for their farms might be so located, say in the Dakotas or other western states, that they would know when forming the plan that their products would be destined ultimately to reach the eastern states, not to speak of foreign countries. So of cotton growers. So of growers of livestock. So of persons engaged in commercial pursuits respecting any sort of articles intended only for private use or consumption.

We are thus brought to the necessity of reconciling the organic right or liberty of contract for the purposes of private gain on the one hand with the inhibition of the anti-trust act against the making of a "contract, combination, in the form of trust, or otherwise, or conspiracy, in restraint

of trade or commerce among the several states," on the other hand.

### ASSIGNMENTS OF ERROR.

In the first place, we beg to refer to without repeating the assignments of error which were filed on behalf of the appellants with the petition for appeal. (R. 328.)

In the next place, we contend that errors occurred in the trial and decision in the Court of Appeals in the following respects :

(1) The court erred in holding the plan in question or its execution either in intent or effect as directly interfering with interstate trade or commerce.

(2) The court did not accord to the appellants the effect due to the purely private character either of their objects of being, or their undertakings ; nor did it recognize in them those rights and privileges respecting private enterprise and profit which are guaranteed to all citizens of the several states. It did not in consequence yield to them the liberty of uniting their interests and doing business as an entirety through one of their members.

(3) The court did not distinguish between local trade and commerce on the one hand, and interstate trade and commerce on the other, when determining the object and effect of the plan upon which this cause is based ; and, on the contrary, it employed what it conceived to be according to common law tests the direct effect upon local trade and commerce as also the direct effect upon interstate trade and commerce, whereas the latter effect, if any there were, was plainly indirect and remote.

(4) The court did not yield due consideration to the evils from which appellants were suffering, or to their intent in entering into the plan for the avoidance of those evils, when determining the effect of the plan upon interstate trade and commerce.

(5) The court failed to give due effect to the continued operations of greater competitors than all of appellants combined within the territory in dispute, as well as those of the still larger competitors located in other portions of the country, when determining the restriction, if any, which the disputed plan placed upon competition.

### PROPOSITIONS.

*First.* Nothing can be denounced as falling within the inhibitions of the anti-trust act unless it can be shown affirmatively that its direct and necessary effect is to restrain interstate trade or commerce; it will not do to show merely that such effect is indirect or remote.

*United States v. Joint Traffic Association*, 171 U. S. 505, at 568.

*Anderson v. United States*, 171 U. S. 604, 616.

*United States v. E. C. Knight Co.*, 156 U. S., at p. 12.

*Hopkins v. United States*, 171 U. S. 578, 592, 594.

*N. Y. L. E. & W. R. R. Co. v. Pa.*, 158 U. S. 431, 439.

*Second.* Since no article of commerce can be regarded as within the national power of commercial regulation until its final transportation from the state of its origin has commenced(*a*); and since this power of regulation ceases the moment such article reaches and is put into condition for use or sale as part of the general mass of property at its destination(*b*); it inevitably follows that whilst said article is so without the regulating power of congress, as aforesaid, it is, as regards that power, within the exclusive dominion and control of its owners, and they may as between themselves make any arrangement they choose looking to either the immediate or ultimate sale of the article generally, that is to say, both within and without their own state according as opportunity



may arise, no matter what legal definition, whether monopoly or otherwise, may be rightfully employed to describe the arrangement. Such arrangement, as well as any determination reached by the owners *themselves* in its execution, does not involve intercourse with a stranger as purchaser or otherwise, and consequently is not trade or commerce at all—certainly not interstate trade or commerce(c).

(a) *Coe v. Errol*, 116 U. S. 517, 527-8.

*Turpin v. Burgess*, 117 U. S. 504, 506-7.

*Kidd v. Pearson*, 128 U. S. 1, 24-5.

*United States v. Freight Association*, 166 U. S. 290, at 325-6.

(b) *Brown v. Huston*, 114 U. S. 622, 632.

*Pittsburgh, etc., Coal Co. v. Bates*, 156 U. S. 577-588.

*Emert v. Missouri*, *Ib.* 296.

Observe, also, rule sustaining proportional tax against interstate carriers respecting property held and earnings derived within state levying the tax.

*Adams Express Co. v. Ohio*, 165 U. S. 195.

*S. c.* on rehearing, 166 U. S. 185.

*Express Co. v. Kentucky*, *Ib.* 171.

(c) *Ficklen v. Shelby Co.*, 145 U. S. 1, at 21.

*Brennan v. Titusville*, 153 U. S. 306.

Note in this connection claim as to conspiracy—also its criminal character under anti-trust act, and absence of proper averment and total absence of proof as to purpose to violate that act.

*In re Debs*, 158 U. S. 564.

*Arthur v. Oakes*, 63 Fed. 310.

*Elder v. Whitesides*, 72 Fed. 724.

*Pettibone v. United States*, 148 U. S. 203-4.

*Third.* The arrangement or plan in question, as well as its execution, differs from the transactions involved between purchasers in one state of soliciting agents representing and disposing of goods of their principals in another state (like the class of cases to which *Robbins v. Taxing District*, 120 U. S. 489, belongs); because sales made by any of appellants were only incidental to the plan in question or to any determination made under it by the members as among themselves, and were of articles for delivery generally, that is, as well within the state of production and ownership as without (like the class of cases to which *Ficklen v. Shelby Co.*, *supra*, belongs); whereas, the other transactions mentioned involved nothing but efforts to sell and purchase and actual sales between buyers and sellers—the latter acting through agents—in one state, of particular goods located and owned in another state and to be delivered and transported outside of that state under a *contractual obligation*, and not merely a mental resolution on the part of the owner alone, to do so. The distinction between these two classes is the difference between a business involving sales generally of both local and non-local character, and one involving sales in one state for delivery in other states only—or, in other words, the difference between indirect, unintentional, and even contingent, effect upon interstate trade and commerce on the one hand, and direct and intentional effect upon such trade and commerce on the other.

## ARGUMENT.

### I.

#### COMMON LAW TESTS OF VALIDITY OF PLAN IN DISPUTE IRRELEVANT.

It is not our purpose to argue our propositions *seriatim*. It certainly is not necessary in this court to argue the first one. No doubt it will be conceded by our learned adversary.

The same may be said of the first two members of the second proposition. The claim made on behalf of the government is that the plan of the appellants operated directly to place restraint upon interstate trade or commerce. Unless our learned adversary can make this claim appear affirmatively the decree of the court below must of necessity be reversed.

We do not believe that it is necessary to consume time with either the citation of authorities or the presentation of argument upon the question made in the court below, whether the plan in question would or would not fail according to the principles of the common law; for if it would, we do not understand that such a conclusion would be the true test of whether the plan directly interferes with interstate trade or commerce. If any arrangement made between private individuals or private corporations themselves respecting the manufacture and ultimate disposition of articles of a private character is within the purview at all of the anti-trust act, which may well be denied, still the test of interference with any inhibition there made is not, as it seems to us, whether a state might under its police power forbid and destroy it, but whether its direct and inevitable tendency would interfere with interstate trade and commerce.

Suppose the states in which these foundries are located had through both constitutional and legislative sanction authorized the making of this arrangement, it would scarcely be denied that the states could do so, at least as against every power except that of congress. But under this supposition could the validity of the arrangement under the power of congress be made to depend upon the rules of the common law? Or, on the other hand, suppose an act of a state legislature should in terms authorize such an arrangement, but its right to do so were questionable under its constitution, would the validity of the arrangement, if challenged under the commercial power of congress, be fairly tested by reference to the rules of the common law? It is true that

it might well be argued that even if the anti-trust act was intended to apply to private arrangements of this character, it was not designed to reach reasonable as distinguished from unreasonable plans among owners. But we apprehend that if the act should be held to apply to such plans at all, it would be because they *in fact* directly and inevitably interfere with interstate trade and commerce, and not because they are reasonable or unreasonable according to the principles of the common law.

We have thought it necessary to say this much upon this subject because of the elaborate consideration given it in the opinion of the Court of Appeals. If we are right in our contention, then that portion of the decision below is not relevant to the present inquiry.

In the *Trans-Missouri case* and the *Joint-Traffic case* it was insisted with great force that the common law distinction between reasonable and unreasonable restraints upon trade and commerce should be observed and followed in those cases. As we understand the decisions the distinction was regarded as immaterial, because the anti-trust act itself did not in the opinion of the majority of the court recognize the distinction as respects the restraint upon interstate trade and commerce which it forbade. It is true that the subjects under consideration there were contracts between interstate carriers, fixing prices for the transportation of commodities; and that the railway companies making the agreements were *quasi* public agencies in control of *quasi* public property. But the distinction due to the character of the agencies and properties there involved would tend to prove that private agencies resolving upon a course of conduct among themselves, touching merely private property, were not within the scope and meaning at all of the anti-trust act (*Trans-Missouri case*, at pages 333-5), rather than that the rules of the common law should be employed as an aid in determining whether the effect of any particular ar-

rangement or plan was direct or indirect upon interstate trade and commerce.

*Anti-trust act was not designed to deal even with monopolies and the like, as such.*

In *United States v. E. C. Knight Co.*, 156 U. S., at p. 16, Mr. Chief Justice Fuller, said :

"It was in the light of well-settled principles that the act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such ; or to limit and restrict the rights of corporations created by the states or the citizens of the states in the acquisition, control, or disposition of property ; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold ; or to make criminal the acts of persons in the acquisition and control of property which the states of their residence or creation sanctioned or permitted."

In *United States v. Freight Association*, 166 U. S., at p. 326, Mr. Justice Peckham says :

"In the *Knight Company case (supra)* it was said that this statute applied to monopolies in restraint of interstate or international trade or commerce, and not to monopolies in the manufacture even of a necessary of life."

In *United States v. Joint-Traffic Association*, 171 U. S., pp. 567-8, Mr. Justice Peckham having occasion to allude to a formidable list of contracts which learned counsel supposed, under the decision in the *Trans-Missouri case*, would fall within the anti-trust act, said :

"This makes quite a formidable list. It will be observed, however, that no contract of the nature above described is now before the court, and there is some embarrassment in assuming to decide herein just how far the act goes in the direction claimed. Nevertheless, we might say that the formation of corporations for business or manufacturing pur-

poses has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership. It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade.

We are not aware that it has ever been claimed that a lease or purchase by a farmer, manufacturer or merchant of an additional farm, manufactory or shop, or the withdrawal from business of any farmer, merchant or manufacturer, restrained commerce or trade within any legal definition of that term; and the sale of a good will of a business with an accompanying agreement not to engage in a similar business was instanced in the *Trans-Missouri case* as a contract not within the meaning of the act; and it was said that such a contract was collateral to the main contract of sale and was entered into for the purpose of enhancing the price at which the vendor sells his business. . . . In *Hopkins v. United States*, decided at this term, *post*, p. 578, we say that the statute applies only to those contracts whose direct and immediate effect is a restraint upon interstate commerce, and that to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. The effect upon interstate commerce must not be indirect or incidental only. An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does not directly restrain such commerce, is not, as we think, covered by the act, although the agreement may indirectly and remotely affect that commerce. We also repeat what is said in the case above cited, that 'the act of congress must have a reasonable construction, or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and possibly to restrain it.' To suppose, as is assumed by counsel, that the effect of the decision in the *Trans-Missouri case* is to render illegal most business contracts or combinations, how-



ever indispensable and necessary they may be, because, as they assert, they all restrain trade in some remote and indirect degree, is to make a most violent assumption and one not called for or justified by the decision mentioned, or by any other decision of this court."

In *Hopkins v. United States*, 171 U. S. 578, it was held that an association of persons to receive consignments of livestock from owners both within and without the states of Missouri and Kansas (across the boundary of which the stock yards were located), to feed the stock and prepare it for market, and also dispose of it, and receive the sales proceeds from the purchasers and pay them to the owners, less charges, expenses and advances, was not in violation of the anti-trust act; although the members were in the habit of soliciting consignments from owners of stock in other states and making advances thereon; although the rules of the association forbade members from buying livestock from a commission merchant in Kansas City not a member; although the members fixed the commissions for selling livestock, prohibited the employment of agents to solicit consignments except upon a stipulated salary, and forbade the sending of prepaid telegrams or telephone messages with information as to the state of the market; and although no members could transact business with any person violating these rules.

In *Anderson v. United States*, ib. 604, it was decided that an association and certain of its rules under which its members acted were not in violation of the anti-trust act, such members bearing much the same relation to the association and carrying on much the same business as that of the members of the association passed upon in *Hopkins v. United States*; the main difference being that the members of the traders' exchange were purchasers of cattle while the members of the livestock exchange were commission merchants. The disputed rules in substance provided that the exchange

would not recognize any yard trader who was not a member; that if one of a co-partnership should be a member of the exchange, then all the co-partners should; that no member of the exchange should employ any person except a co-member to buy or sell cattle, or pay any order buyer or salesman a fee for buying cattle from or selling cattle to a person not a member.

The contention in those cases was that soliciting consignments of livestock from other states for the purpose either of handling the stock for the owners upon a commission or for the purpose of purchasing the stock, through such restricted membership, directly interfered with interstate trade and commerce. But this court held that such associations rather facilitated than placed restraints upon such trade and commerce; and at most that the restraints were only indirect and remote.

In the light of the foregoing decisions, there ought not to be much difficulty, as it seems to us, in determining whether the present plan ever operated in any forbidden way upon interstate trade or commerce.

*All that appellants did in making or executing the plan was wholly between themselves, not with purchasers, and while their property was within their own exclusive dominion and control.*

In considering whether this plan or its execution was a direct restraint upon interstate trade or commerce, we should first classify some features which obviously belong to the inquiry. In the first place, sales of pipe to the cities or persons within the immediate vicinity of the foundries, respectively, and all transactions had in that regard, were plainly of a local character only. So of sales and negotiations leading up to sales from foundries for delivery within the states where they were severally located. In the next place, the mere concurrence of the appellants in

the plan adopted, even so far as it may be said to have contemplated disposal of property for delivery in other states, was, as regarded all strangers to the plan, the same as the mental operation of a single individual. It might be changed. No sales might be made. It finds analogy in decisions like that of *Coe v. Errol*, where Coe had prepared his logs and placed them on the bank of the Androscoggin river with intent, so far as his own mental operation was concerned, to float them along the river into another state at the first opportunity, and there to sell them. The logs were not then in course of transportation, and the purpose and intent of a single individual is not commerce. So it may be said of the cast-iron pipe, whether manufactured or not; so also of the concurrence in purpose and intent of two or more persons or corporations touching their joint conduct in the future respecting the disposition of their cast-iron pipe. Let us examine this for a moment.

The commercial power of congress so far as this case is concerned, is "to regulate commerce . . . among the several states." There must therefore be commerce before any regulation made in pursuance of the power can operate. Commerce, it is true, is a broad term in its meaning and significance. It is unnecessary to repeat the definitions so often given in this court. It is enough to say now that it contemplates intercourse between two or more persons for purposes of purchase, sale or exchange of articles, as well as transportation. There are two or more sides to the transactions so contemplated. There must be persons represented upon the several sides. To say that there is commerce between persons who are all upon the same side of a given proceeding would be to say that a single person could engage in commerce by negotiating or contracting with himself. When, therefore, the appellants concurred in their plan, they simply settled a course of conduct for themselves. They had not reached the point of commercial intercourse.

They had not begun to engage in commerce. They were not then either making sales or trying to. They were not transporting any article of commerce. They only determined to do so when occasion should arise. Such conduct, such action, is not commerce or the subject of regulation at all on the part of congress. Until something more was done, all questions of commerce or transportation were matters "altogether *in fieri*, and not at all a fixed and certain thing."

We may now proceed to the next stage of the plan. We shall not consider the whole plan unless we observe and bear in mind that it involved the manufacture and sale of cast-iron pipe generally; that is to say, in each state where one or more of the foundries were located, and its sale in other states, according as opportunity might arise. It contemplated local and interstate traffic indifferently. It related to no particular purchasers, but to purchasers in general. There was consequently no legal relationship created between any of the appellants on the one side and any purchaser on the other, until a contract was made, no matter whether the purchasers were within the state in which the foundry fixed upon for delivering the pipe was located or in some other state. This case differs in this important respect from *United States v. Coal Dealers' Assn.*, and *United States v. Jellico Mountain Coal and Coke Co.*, referred to in *Anderson v. United States*, cited *supra*, 617.

What then is to be said of the action of the appellants when they reached a point of considering a supply of cast-iron pipe, occasioned say by a general advertisement calling for bids? The evidence shows that in nearly all, if not quite all, such cases the advertisement would require pipe of given dimensions and weight. This would result in having to manufacture the pipe specially. Whatever was to be done then necessarily related to a subject for future manufacture.

But the first thing to be done according to the plan existing when this cause was begun, was to have a meeting of

the representatives of appellants. The meeting did not provide for the presence of the proposed buyer either in person or by agent. It is said with some force that he was not expected to be present. It is said that this was a secret meeting. Its purpose was to determine, first, whether any of appellants should bid at all; secondly, what one of them should do so. Here again was a conference between the appellants themselves for their own purposes respecting their own private interests. As it seems to us, there can be no sort of relation between any action so taken among appellants and any federal regulation of commerce. Such action could not do more than to fix a course of conduct for appellants. It was not until after this was completed that any intercourse could begin with a proposed purchaser. It is said that the meeting was also called to fix a price. We do not understand this to be quite accurate. We think it was a meeting to select the company which should fix its own price and bid.

But assume that the purpose of the meeting included the fixing of a price. The price had to be made with reference to outside and eager competitors. What material difference is there between the consummation of such a mode of entering upon competition and that which a single individual adopts for himself? True it resulted in some of appellants declining to bid. They were not bound to. True also that those who so declined received a portion of what may be conceded to be the profits or expected profits of the enterprise if the company chosen to bid should obtain a contract. But the action thus far was by *themselves*, for the promotion of their own interests. No contract whatever in the remotest way was up to that time negotiated or made with any person proposing to purchase. The action was exactly like that of an individual calculating first upon whether he would bid, and, next, at what price; except, only, the concurrence involved here of several minds in reaching

the conclusion which a single mind in the case supposed attained alone. The point is that no stage of trade or commerce, either local or national, had up to this time been reached.

It will be borne in mind that the foregoing observations are intended, not only as a fair analysis of the action contemplated and taken under the plan by the parties themselves, but also and particularly to show their collateral and indirect bearing upon interstate trade and commerce.

But it has been said that this plan and its execution should be denounced as a conspiracy in restraint of interstate trade and commerce. It should be observed, however, that if it be a conspiracy it is one not merely of an unlawful but of a criminal character. The first three sections of the anti-trust act declare the things there forbidden to be misdemeanors, and upon conviction they provide for imposing punishment, both by fine and imprisonment. The fourth section also vests in the Circuit Courts jurisdiction to prevent violations by injunction. The giving of this preventive remedy does not change the criminal character of the conspiracy itself.

*In re Debs*, 158 U. S. 564.

*Arthur v. Oakes*, 63 Fed. 310.

*Elder v. Whitesides*, 72 Fed. 724.

It would, therefore, seem clear that the nature of the conspiracy here forbidden would, in order to sustain either an action of the present kind or an indictment, require both averment and proof of a *purpose* to restrain or interfere with interstate trade or commerce. Even if the averments of the bill in this case could be said under a liberal construction to charge a conspiracy of this character, which we deny, still we do not understand it to be even claimed that there is *any proof of a purpose* on the part of appellants to enter into any such conspiracy to interfere with interstate trade or com-



merce. The utmost that could be said would be that a purpose on their part might be inferred to restrict competition among themselves, so as to fall within the rules of the common law. This we do not admit, though for reasons already stated we do not discuss the question. It is however plain that a purpose to violate the common law—we hardly need say there are no common law crimes within federal cognizance—or a state law, would not justify either a decree in such a cause as this, or a conviction under an indictment for conspiracy within the meaning and intentment of the anti-trust act.

*Pettibone v. United States*, 148 U. S. 187, 203-4.

We may then safely recur to what we may call the unilateral acts of the appellants; that is to say, the acts among themselves in formulating the plan and in carrying it into execution down to and including the selection of one of the members to make a proposal to supply cast-iron pipe under an advertisement for bids. We insist that no matter what name may be given to the relations which they entered into as between themselves—whether we call it a contract, combination, conspiracy or monopoly—it did not up to the stage of completion mentioned touch upon commerce at all; and that its ulterior or other effect, if there was any, upon interstate trade or commerce was of the most indirect character.

Let us consider finally what happened after the company to make the bid was chosen. As we understand the evidence the company was then acting as any ordinary individual would with respect to his own affairs, who was compelled to enter the field of competition with other manufacturers of cast-iron pipe who were in nowise connected with this plan. The fact that occasionally one or more of the other appellants would put in proposals at higher sums than that of the one so chosen, seems to us to be totally irrelevant. It might be conceded for the sake of

argument that such conduct would have entitled the purchaser to avoid the contract in case the company so chosen was the successful bidder; but that would affect interstate trade or commerce only remotely if at all. Plainly the purpose was not to interfere with that sort of trade or commerce. If the person so chosen became the successful bidder, it does not appear that he would not have succeeded at the same price if his co-members had entered into an actual contest for the contract. There were actual contests with other competitors. The success of the chosen company was consequently due to bidding a lower rate than other confessedly honest competitors could offer. It might as well be said, and we believe it was suggested below, that the successful bidder in such case possessed geographical advantages over his real competitors. This is a circumstance only of an ordinary character. It is like the case of a particular manufacturer being able through superior experience or ability, or otherwise, to turn out his products more economically than his competitors. But is it to be supposed for a moment that these accidental advantages or disadvantages are matters which congress either sought to regulate or could regulate? All such matters are as plainly collateral to the main issue as they are obviously incidental and indirect in their effects upon interstate trade and commerce.

It will not be forgotten in this connection that this same mode of selecting a bidder was followed in leading up to the making of proposals for the sale and delivery of pipe within the states in which one or more foundries of the appellants were located. This necessarily resulted frequently if not always in the making of the contracts solely between a selling company and a purchaser located in the same state. This emphasizes our contention that both the plan and its execution affected interstate trade and commerce only indirectly and remotely.

## II.

THE PRESENT CASE IS NOT LIKE THE CLASS OF CASES TO WHICH  
ROBBINS *v.* TAXING DISTRICT BELONGS.

The Court of Appeals, as we understand, regarded the plan in question as falling within the principles laid down in the class of cases just mentioned. The argument already made has necessarily to a large extent anticipated this view. The precise point decided in that class of cases is, that it was interstate commerce to negotiate and contract in one state for the sale and delivery to the purchaser in that state of goods then located and owned in another state. The transaction was in a particular state; it involved business intercourse between citizens of different states, the seller acting by agent; it contemplated, and if a sale was completed, involved, a *contractual obligation* to deliver and transport certain specified goods, at a named time, from another state, belonging to a citizen of that state; such transactions and such only were intended to be or in fact were entered into. In short, the business there involved related to articles to be carried from one state to another, and nothing else; and the purpose so to make them subjects of interstate commerce was fixed by contractual obligation. Every thing done by way of negotiation was with reference to that obligation. The effort was to tax this traffic by calling it a drummer's tax. Such an exaction was an obvious discrimination against the persons and property of other states, in favor of citizens of the state levying the tax. Mr. Justice Bradley said in the *Robbins case*:

“This kind of taxation is usually imposed at the instance and solicitation of domestic dealers, as a means of protecting them from foreign competition. . . . It shows

that it not only operates as a restriction upon interstate commerce, but that it is *intended* to have that effect as one of *its principal objects*." (120 U. S., at p. 498; *italics ours*.)

If we have made a clear statement of that class of cases, we think that it alone will fully distinguish the cases from the one at bar. We but repeat, when we recall the facts, that the plan in question here contemplated and provided for general business, that is to say, business with both local buyers and buyers of other states indifferently; that the concurrence in the plan and every thing done under it involved intercourse only between the parties to the plan itself; and that, when a bidder was selected, he alone, upon his own behalf, in his own interest, either proposed to contract or in fact contracted indifferently as between local buyers and buyers in other states, according to where the residence of the purchaser might happen to be.

It would seem to us that the class of cases to which *Ficklen v. Shelby County*, 145 U. S. 1, belongs, would be more in point than the *Robbins* case or its class. The complaining merchandise brokers in the *Ficklen* case were able to show that their principals were as to one of the brokers wholly non-resident, and as to the other largely so; and say the court: "This, however, may have been otherwise then and afterward, as their business was not confined to transactions for non-residents." Mr. Chief Justice Fuller continuing, at page 21, said:

"In the case of *Robbins* the tax was held, in effect, not to be a tax on Robbins, but on his principals; while here the tax was clearly levied upon complainants in respect of the general commission business they conducted, and their property engaged therein, or their profits realized therefrom."

Could these appellants have resisted taxes of any sort levied by their respective states upon the ground that they, like Robbins, were engaged exclusively in interstate traffic?

Would not their claim have been overthrown by the principles laid down in the *Ficklen case*? As it seems to us, the effort to use a case like that of *Robbins*, which involved only transactions of an interstate character, to control the present cause, is to select merely the transactions of that character which happened to occur with appellants and so to isolate those transactions from those of a local character, only to force an analogy and not to discover one by any process of comparison of natural attributes.

Is it necessary to pursue the distinction further?

Clearly appellants' plan did not affect interstate trade or commerce any more than does an indefinite variety of plans or contracts or arrangements which are confessedly lawful. All business and business transactions of a general character affect interstate trade and commerce more or less, but indirectly only. For illustration, in *United States v. E. C. Knight Co.*, Mr. Chief Justice Fuller, at page 17, said:

"It is true that the bill alleged that the products of these refineries were sold and distributed among the several states, and that all the companies were engaged in trade or commerce with the several states and with foreign nations; but this was no more than to say that trade and commerce served manufacture to fulfill its function. Sugar was refined for sale, and sales were probably made at Philadelphia for consumption, and undoubtedly for resale by the first purchasers throughout Pennsylvania and other states, and *refined sugar was also forwarded by the companies to other states for sale*. Nevertheless, it does not follow that an attempt to monopolize, or the actual monopoly, of the manufacture was an attempt, whether executory or consummated, to monopolize commerce, *even though, in order to dispose of the product, the instrumentality of commerce was necessarily invoked.*" (Italics ours.)

In *Hopkins v. United States*, *supra*, it was strongly urged that there were many restrictions which placed restraints upon interstate trade and commerce. To illustrate,

section 10 of Rule IX prohibited any commission firm or corporation from hiring more than three solicitors at any one time upon a stipulated salary, and it was urged that they were engaged in interstate commerce, that this was an unlawful inhibition upon the privilege possessed by those persons under the constitution to make lawful contracts in furtherance of their business, and that in this respect those members had surrendered their dominion over their own business and permitted the exchange to establish a species of regency, etc. But Mr. Justice Peckham, at pp. 602, 603, says :

“ We say nothing against the constitutional right of each one of the defendants and each person doing business at the Kansas City stock yards to send into distant states and territories as many solicitors as the business of each will warrant. This original right is not denied or questioned. But can not the citizen, for what he thinks a good reason, contract to curtail that right? To say that a state would not have the right to prohibit a defendant from employing as many solicitors as he might choose, proves nothing in regard to the right of individuals to agree upon that subject in a way which they may think the most conducive to their own interests. What a state may do is one thing, and what parties may contract voluntarily to do among themselves is quite another thing.”

In *Anderson v. United States*, cited *supra*, at p. 616, Mr. Justice Peckham, having occasion to speak of the general though indirect effect of acts both of states and individuals upon interstate commerce, said :

“As said in *Smith v. Alabama*, 124 U. S. 465, 473: ‘ There are many cases, however, where the acknowledged powers of a state may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations.’ The same is true as to certain kinds of agreements entered into between persons engaged in the same business for the direct and *bona fide* purpose of properly and reasonably regulating the conduct of



their business among themselves and with the public. If an agreement of that nature, while apt and proper for the purpose thus intended, should possibly, though only indirectly and unintentionally, affect interstate trade or commerce, in that event we think the agreement would be good. Otherwise, there is scarcely any agreement among men which has interstate or foreign commerce for its subject that may not remotely be said to, in some obscure way, affect that commerce and to be therefore void. We think, within the plain and obvious construction to be placed upon the act, and following the rules in this regard already laid down in the cases heretofore decided in this court, we must hold the agreement under consideration in this suit to be valid."

Respectfully submitted,

JOHN W. WARRINGTON,

*Of counsel for Addyston Pipe and Steel Co.*

PAXTON, WARRINGTON & BOUTET,

*Counsel.*



# Supreme Court of the United States.

OCTOBER TERM, 1898.

*The Addyston Pipe and Steel Company, Dennis Long & Co., Howard-Harrison Iron Company, Anniston Pipe and Foundry Company, South Pittsburgh Pipe Works, and Chattanooga Foundry and Pipe Works,*

*Appellants,*

No. 269.]

*vs.*

*The United States,*

*Appellee.*

IN EQUITY.

Appeal from the United States Circuit Court of Appeals for the Sixth Circuit.

SUPPLEMENTAL AND REPLY BRIEF FOR APPELLANTS.

## OBSERVATIONS UPON THE EVIDENCE.

In the brief filed for the United States especial effort is made to show from the evidence that the arrangement among the appellants provided:

- (1) For arbitrarily fixing the prices at which the cast-iron pipe should be sold to customers;
- (2) For completely stifling all competition;

(3) For a bonus *as profits* on each sale;

(4) And, lastly, attention is called to certain transactions and telegrams, with a view of showing, as claimed, first, that appellants always sought to sell their pipe for the highest price they could obtain, and, second, that comparisons between pipe sold within "pay territory" and "free territory" disclose discrepancies, supposed to reflect injuriously upon the nature and effect of the plan in dispute.

If there is error in these efforts, then much if not all of the foundation for learned counsel's argument is unsound.

Referring to these subjects in the order mentioned :

#### PRICES.

It is necessary to discriminate between the two plans which were in existence during the life of the Pipe Association. The first one had been abandoned, and the second one alone was pursued when this action was commenced. We shall avoid confusion if we assign proceedings of the association to the respective plans to which they severally belonged. The plan under which appellants were operating when the petition was filed is embraced in this resolution :

"*Resolved*, That from and after the 1st day of June, that all competition on the pipe lettings shall take place among the various pipe shops prior to the said letting. To accomplish this purpose, it is proposed that the six competitive shops have 'a representative board' located at some central city, to whom all inquiries for pipe shall be referred, and said board shall fix the price at which said pipe shall be sold, and bids taken from the respective shops for the privilege of handling the order, and the party securing the order shall have the protection of all the other shops." (R., p. 70.)

A moment's reflection will show that the words, "said board shall fix the price at which said pipe shall be sold,"

do not mean the price at which the pipe shall be sold at any public letting, but the price at which the pipe shall be sold as among themselves when determining upon what one of the companies should put in its proposal for the work. Two considerations prove this. One is that in the nature of things the board of representatives could not so far in advance know what sum to fix with respect to a public letting. The other is that the company selected to make the proposal not only obtained the right in virtue of paying the highest bonus, but was actually accorded the right to offer at the public letting a lower price than the one fixed by the board. The necessary result is that the words relating to the fixing of the prices must have had reference to something else. We maintain that those words referred to sales made as between the representatives of the companies themselves of the privilege of bidding. The following extract from minutes of board of representatives is an illustration (R., p. 74) :

"Res. 8. W. L. Davis moved to sell the 519 pieces of 20" pipe for Omaha, Neb., for \$23.40 delivered.

"Seconded by D. R. P. Dimmick. Carried.

"Res. 9. F. B. Nichols moved that Anniston participate in this bonus *and the job be sold over the table.*

"Seconded by W. L. Davis. Carried.

"Pursuant to the motion the 519 pieces of 20" pipe for Omaha *was sold to Bessemer* at a premium of \$8. (J. W. T.)."

Further in support of this claim, we call attention to that part of the answer which refers to the meetings of the representatives of the companies. After stating the purpose of agreeing upon a price among themselves, it proceeds (R., p. 32) :

"The price agreed on, as above stated, among defendants, did not in fact fix or regulate the price at which contracts were obtained, but was only adopted as a fair price, and con-

stituted a basis upon which the defendants could intelligently compete among themselves and determine who should endeavor to secure the order. It was subject to the further modification of that general competition which usually took place, and unless it was further reduced to meet that general competition, or was the lowest offer made, did not secure the contract."

Again, at page 35, the answer states:

"On the contrary, they aver the fact to be that in all agreements, arrangements, and transactions of defendants with each other, and in strict accordance with such mutual understanding of defendants, one of them bidding for supply of such pipe or material had the right to bid, and did bid, any price which might be determined by said defendant so bidding."

These allegations of the answer are not disputed by the Government by any pleading or evidence; but Government counsel draws a contrary inference by reason, as we insist, of his failure to observe the sense in which the words of the resolution were used by the parties themselves.

Our contention is further supported by the uncontradicted evidence of Mr. Callahan, of the Louisville Company, who says (R., p. 219, top):

"Affiant distinctly avers that every one of defendants had the right to, and was expected to, bid for the respective orders such prices as in its judgment would be necessary to obtain the order in competition with the other manufacturers."

If it should be asked why, in view of the liberty which each company possessed to bid a lower price than the sum so agreed upon among the six representatives, there was any necessity to agree upon a price at all, the answer is two-fold: (1) That it was to determine upon what, in the judgment of the companies, would be a reasonable price; and (2) That it



afforded a basis for reducing the amount bid by the successful company by way of bonus wherever it obtained the contract by bidding lower than the price agreed on.

#### COMPETITION.

The contention made on behalf of the government that the "auction pool" or competitive bonus plan stifled all competition is disproved in several ways. In the first place, there were competitors in the manufacture and sale of cast-iron pipe within the states in controversy whose total manufacturing capacity was greater than that of all of appellants together; while the total manufacturing capacity of all the outside competitors of the country at large was more than twice that of all the appellants together (R., pp. 36-7). In the next place, it is shown by the undisputed evidence of Mr. Callahan that out of twelve hundred contracts let in the year 1896, in the territory mentioned in the petition, the appellants all together were able only to secure four hundred and fifty-seven (R., p. 219). The Government offers no evidence whatever in dispute of this fact.

It is further shown by the evidence of appellants and of their competitors in business, at pages 147, 149, 155, 163, and 164 of the Record, that appellants were required upon all sales made to meet the competition of manufacturers who were in no way connected with this plan.

It is to be observed also, that the very resolution which is quoted above, and which is so severely condemned by Government counsel, in terms provides "that all *competition* on the pipe lettings shall take place among the various pipe shops *prior to the said letting*;" thus clearly implying that competition was intended to be had as between appellants themselves by the competitive bonus system which was substituted for the fixed bonus system. It is true that the plan restricted competition as between appellants themselves at the time bids were actually received by proposed purchasers, but

it is a mistake to say either that all competition was stifled, or that the competition which took place between appellants themselves in determining upon which one should bid for the contract, did not itself tend to reduce prices. That the outside competition was effective, is demonstrated by the fact, before shown, that but little more than one-third of the total number of contracts made in the disputed territory in the year 1896 were obtained by appellants; and that the competition which took place between appellants themselves under their competitive bonus plan tended to reduce the prices so agreed on among themselves for the purpose of carrying out the plan, is a plain sequence from the natural desire of each to obtain the work and keep its foundry going.

The inevitable result of all this is that there was only a partial restriction of competition. The Government must therefore succeed, if it shall succeed at all, upon some other fact than the one so earnestly pressed in the oral argument, as well as upon its brief, that there was a total stifling of competition. The Government must also meet in some way not as yet disclosed, the patent fact that this plan, no matter what may be said of it, was designed<sup>ed</sup>~~ated~~ for and applied to both local trade and non-local trade. The only exception which can be made to what has just been said is in regard to the "reserved cities." Prior to December, 1895, the fixed bonus plan alone was applied to those cities. At that time it was determined that the representatives of the appellants should fix the prices from time to time, according to the circumstances of each particular purchase; but it must be borne in mind that while certain cities were assigned to particular companies, still those companies, in every instance, were compelled to meet the competition of all other manufacturers who were not parties to the plan. The only difference between the operations of appellants under this plan in regard to the "reserved cities" and in regard to other and different purchasers was, that appellants did not compete

among themselves for the privilege of competing with outsiders in the reserved cities, as they did with respect to other purchasers.

#### BONUS NOT PROFITS.

The contention of our learned adversary upon this point grows out of a misapprehension of the purpose for which the competitive plan was adopted and of the sense in which the word "bonus" was used by the parties. The resolution of the association shows that the bonus, so-called, was a sum to be divided among the members (R., pp. 64, 65). It is not referred to otherwise. There is nothing in the plan itself to show that the bonus was a sum to be added, as claimed, to a fair price, or, in other words, an arbitrary profit. The idea that the bonus represents an arbitrary sum in excess of a fair price is supported only by the assertion of the informer, McClure. The overwhelming evidence is that its purpose and use were merely to enforce a fair and equitable distribution of the business and work of supplying the demand for pipe among the several plants of appellants.

The answer states (R., p. 30) :

"What was miscalled a bonus was more in the nature of a premium, and its only object was, as aforesaid, to restrain any one or more of defendants from monopolizing more than a proper share of the trade within said territory, which object the so-called bonus would not have accomplished if it had been an amount charged over and above a fair price. But being deducted from and paid out of what was a fair price, it did operate so that no one of defendants could do more than its proper share of said work, without doing so at a loss. As all defendants did about their respective portions of work in said territory, the premium or bonuses, so called, equalized each other, and thus accomplished the only object for which they were intended as aforesaid :

These allegations are supported by the evidence of A.

F. Callahan (R., p. 216), C. W. Harrison (R., p. 177), and M. Llewellyn (R., p. 200).

#### MISLEADING COMPARISONS.

Efforts are made on behalf of the Government to reflect injuriously upon the plan in dispute by comparing prices derived from pipe sold out of miscellaneous stock for ordinary purposes, upon orders by mere telegrams and letters, with prices obtained for pipe made and sold under specifications and subject to tests and inspections. A moment's reflection will satisfy any one that large and miscellaneous stocks of pipe would accumulate in great foundries and that the owners could afford to dispose of the same for culverts and the like at very much less prices than they could manufacture and sell particular kinds under specifications, tests and inspections. These discrepancies occur in all kinds of business. Moreover, it is easy to see that wherever specifications call for high qualities of materials and particular shapes and the like, higher prices will be the consequence; for both the materials and the labor, not to speak of new patterns and the like, must of necessity cost more. Then, again, the cost of drayage in delivering the pipe along the streets or other places, according as required by the specifications, is always an indefinite quantity, and yet is a cost to be taken into account when fixing the price. This cost is not incurred in filling the usual orders received merely by letter or telegram; it is only required under specifications calling for particular kinds of pipe under competitive bidding. Another difference between filling mere telegraphic orders and supplying pipe under specifications is that there is no percentage reserved under the former while there is under the latter. And, again, the manufacturer knows the cost of pig iron in filling a quick order, whereas he must incur the risk of changes in prices of pig iron in filling a time order. All these things are shown by the evidence of appellants and

by evidence, too, of representatives of cities who are familiar with the difference.

See, among others, Callahan, Dimmick and Nichols (R., p. 193); Llewellyn, (R., p. 200); Woodward (R., pp. 166-167); and Marshall (R., pp. 254-256).

## ARGUMENT.

### I.

THE EVILS SOUGHT TO BE REMEDIED BY THE ADOPTION OF THE COMMERCE CLAUSE AS PART OF THE FEDERAL CONSTITUTION, AND THE LIMITATIONS CONTAINED IN THAT INSTRUMENT TOUCHING THE LIBERTY OF CONTRACT, SHOW THAT IT WAS PUBLIC AND QUASI PUBLIC ACTS, AND NOT PRIVATE CONTRACTS CONCERNING SUBJECTS OF A PRIVATE CHARACTER, WHICH WERE INTENDED TO BE EMBRACED WITHIN THE POWER TO REGULATE COMMERCE.

The unusual prominence which the solicitor-general gave in his brief and oral argument to the mere personal equation of this cause satisfied us at the hearing that this proposition should be urged. Until we received his brief, which was on the day the hearing began, we had thought the case could be solved upon a simple inquiry into whether the plan or contract of appellants directly or indirectly affected interstate trade and commerce. We think so still; but if in error, then we wish to press the inquiry further. Appellants' methods of conducting business, as the learned counsel interprets them, seem in his mind to have greater significance than the question of right in congress to forbid the contract. As it seems to us, mere methods of business sink into insignificance in comparison with the matter of power in congress thus to trench upon the liberty of contract. We would not, however, be understood as alluding to this except only

as an explanation of why the present proposition was urged in the closing argument and is presented in this brief.

The learned solicitor general presented neither argument nor authority upon this question. The subject naturally resolves itself into two parts. The first involves an inquiry into the reason for vesting power in congress to regulate commerce ~~tracts~~ and the consequent scope of the power. The second involves an inquiry into how far the liberty of contract as guaranteed by the federal constitution is a limitation upon the commercial power.

If we show what these evils were, and that they did not comprise private contracts touching matters of private concern, we hardly need suggest that at least one intendment of the organic guaranty of freedom of private contract was that it should be a limitation on the power to regulate commerce.

*The evils sought to be remedied by the commercial clause were acts of interference through state legislation and in virtue of it.*

In *Kidd v. Pearson*, 128 U. S., at p. 21, it is said :

"It was said by Mr. Chief Justice Marshall, that it is a matter of public history that the object of vesting in congress the power to regulate commerce with foreign nations and among the several states, was to insure uniformity of regulation against conflicting and discriminating *state legislation*." (Italics ours.)

In *County of Mobile v. Kimball*, 102 U. S., at p. 697, it is said :

"And it is a matter of public history that the object of vesting in congress the power to regulate commerce with foreign nations and among the states was to insure uniformity of regulation against conflicting and discriminating *state legislation*." (Italics ours.)



In *Welton v. State of Missouri*, 91 U. S., at p. 280, it is said of the power to regulate commerce:

“The very object of investing this power in the General Government was to insure this uniformity against discriminating *state legislation*.” (Italics ours.)

In *Railroad Company v. Richmond*, 19 Wall, at p. 589, it is said:

“The power to regulate commerce among the several states was vested in congress in order to secure equality and freedom in commercial intercourse against discriminating *state legislation*; it was never intended that the power should be exercised so as to interfere with private contracts not designed at the time they were made to create impediments to such intercourse.” (Italics ours.)

The only reason for the allusion to contracts in the closing sentence of this quotation is that the subject under consideration was a contract of a railroad company that in consideration of the construction of a specified grain elevator, its owner should have the handling at Dubuque, Iowa, of all through grain passing over the railroad for a period of fifteen years, with right to renewal for fifteen years more. It is to be observed, however, that it was a contract with an interstate carrier touching a subject of interstate commerce. Even that kind of a contract was not treated in that case as falling within the commerce clause, for the reason that it was not intended nor made to interfere with interstate trade and commerce.

In *Case of the State Freight Tax*, 15 Wall., at p. 275, after stating that the transportation of articles of trade from one state to another was the prominent idea in the minds of the framers of the constitution when the power to regulate commerce was vested in congress, it is said:

“A power to prevent embarrassing restrictions *by any state* was the thing desired.” (Italics ours.)

In *Brown v. State of Maryland*, 12 Wheat., while speaking upon the kindred provision forbidding any state to lay imposts, or duties on imports or exports, it was said by Mr. Chief-Justice Marshall, at p. 438 :

"From the vast inequality between the different states of the Confederacy, as to commercial advantages, few subjects were viewed with deeper interest, or excited more irritation, *than the manner in which the several states exercised, or seemed disposed to exercise, the power of laying duties on imports.* From motives which were deemed sufficient by the statesmen of that day, the general power of taxation, indispensably necessary as it was, and jealous as *the states* were of any encroachment on it, was so far abridged as to forbid *them* to touch imports or exports, with the single exception which has been noticed." (Italics ours.)

And in regard to the commerce clause, the Chief-Justice said, at p. 445 :

"The oppressed and degraded state of commerce previous to the adoption of the constitution can scarcely be forgotten." It was regulated by foreign nations with a single view to their own interests; *and our disunited efforts to counteract their restrictions were rendered impotent by want of combination.* Congress, indeed, possessed the power of making treaties; but the inability of the Federal Government to enforce them had become so apparent as to render that power in a great degree useless. Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government, contributed more to that great revolution which introduced the present system, than the deep and general conviction that commerce ought to be regulated by congress. . . ." (Italics ours.)

The learned chief justice thereupon concluded that the

geographical limits of the states were not limitations upon commerce, stating, at p. 446 :

"This question was considered in the case of *Gibbons v. Ogden* (9 Wheat. 1), in which it was declared to be complete in itself, and to acknowledge no limitations *other than are prescribed by the constitution*. The power is coextensive with the subject on which it acts, and can not be stopped at the external boundary of a state, but must enter its interior." (Italics ours.)

In *Gibbons v. Ogden*, 9 Wheat. 196, the chief justice spoke of the limitations there stated and above alluded to as "prescribed in the constitution," thus :

"These (limitations) are expressed in plain terms."

It was not necessary in that case to state more than that the matter under consideration did not fall within any of such express limitations. When we come to inquire, however, whether the liberty of private contract is one of the express limitations so alluded to, it is important to remember that private contracts constituted no part of any of the evils which the learned justices of this court have repeatedly said were the evils sought to be remedied by the vesting of the power to regulate commerce in congress. Those evils were the acts of the states themselves.

Of course, any act undertaken by any political subdivision of a state, such as a city, county, or township, under and in virtue of authority vested by the state, should be treated the same as acts of the state itself. The same may be conceded to be true, also, of every other class of agencies of states which are acting in pursuance of state authority, such as common carriers, gas and water companies occupying public streets, public elevator companies and the like. Whether such agencies are mere creatures of the states themselves, like corporations organized to engage in business directly affecting public interests, or whether they be natu-

ral persons voluntarily devoting their property to the public service, and so, in either case, to impress upon the instruments and property so employed a public nature or character, it may well be said that the acts of such agencies shall be subject to the regulation of congress, if the matters so controlled are of a national character; or subject to the regulations of the states, if they be matters of purely local or internal character.

Illustrations of the character of acts here alluded to which may be within the regulating power of government, either national or state, according to the nature of the subject-matter, are found in the class of cases like :

*Munn v. Illinois*, 94 U. S. 113.

*Wabash Railway v. Illinois*, 118 U. S. 557-569.

*Dow v. Biedelmann*, 125 U. S. 689.

*Budd v. New York*, 143 U. S. 517.

The principles laid down in those cases are analogous to those expressed in the recent decisions of this court in the *Trans-Missouri* and *Joint Traffic* cases. We scarcely need say that contracts between interstate common carriers were held to be within the control of congress in the sense that they could be and were inhibited by the anti-trust act.

This principle is further illustrated by *Guy v. Baltimore*, 100 U. S. 434 :

By an ordinance of the city of Baltimore vessels laden with goods from other states were required to pay for the use of wharves that were free to vessels laden with domestic products.

It was held that the ordinance discriminated against interstate commerce and conflicted with the constitution of the United States.

It was argued in that case (p. 441) that the ownership of the wharves being in the city, it had the right, in its discretion, to permit their use free to vessels laden with domestic

products, and other vessels could not complain if they were charged no more than reasonable compensation. In substance the argument was that, within reasonable compensation, there could be discrimination in favor of domestic products by a municipality owning a wharf. But it was held that this contention though ingenious or plausible, was unsound, because the city of Baltimore was but a part of the state of Maryland, from which it derived authority to adopt ordinances, and that to allow the discrimination in question would be permitting the state to do through one of its agencies, by indirection, what it could not accomplish directly. The ground upon which federal jurisdiction rested is thus stated by Mr. Justice Harlan :

“Municipal corporations, owning wharves upon the public navigable waters of the United States, and *quasi* public corporations transporting the products of the country, can not be permitted by discriminations of that character to impede commercial intercourse and traffic among the several states and with foreign nations.” (Page 443.)

It is the same principle, we submit, as announced in the *Traffic* cases.

It has never been held so far by this court that any tax or burden imposed upon commerce was a regulation thereof so as to conflict with the exclusive power of congress, unless “it was a sovereign exaction” (*Packet Co. v. Keokuk*, 95 U. S. 86), or what amounts to the same thing, a charge or exaction by some *quasi* public corporation acting under state authority.

The point intended to be made is that the distinction between the agencies and properties involved in the cases aforesaid and private individuals with their private property, is so broad and plain as clearly to require other and distinct reasons than any thing stated in those decisions, to show why the act of entering into private contracts respecting private matters, fall

within the regulating power of congress. And this brings us to a consideration of the limitation in the constitution itself, which we maintain forbids such an interference on the part of congress.

*The power to regulate commerce is so limited by the guaranteed liberty of contract as to forbid congress from interfering with private contracts concerning subjects of a private character.*

The fifth amendment provides that :

"No person shall . . . be deprived of life, liberty, or property, without due process of law."

In *Barron v. The Mayor and City Council of Baltimore*, 7 Pet. 243, it was held that this amendment was a limitation on the exercise of power by the Government of the United States, and not upon legislation of the states.

Mr. Chief-Justice Marshall, in the course of the opinion, on the same page, said :

"The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily applicable to the government created by the instrument. They are limitations of power granted *in the instrument itself*; not of distinct governments, framed by different persons and for different purposes.

"If these propositions be correct, the fifth amendment must be understood as restraining the power of *the general government*, not as applicable to the states." (Italics ours.)

Since the passage of the anti-trust act was the first attempt of congress to restrain the freedom of contract as between private persons touching subjects of a private character, we rely upon the constructions placed by this court upon similar language to the quoted portion



aforesaid of the fifth amendment, to support our contention that the amendment placed a limitation upon the right of congress under the commercial power to restrict the liberty of contract.

In *Allgeyer v. Louisiana*, 165 U. S. 578, this court had occasion to pass upon the power of one state to forbid the making of an insurance contract in another state respecting property located in the former. At p. 589 Mr. Justice Peckham, in speaking for a unanimous court upon the subject of liberty of contract, said :

“ It was said by Mr. Justice Bradley, in *Butchers' Union Company v. Crescent City Company*, 111 U. S. 746, 762, in the course of his concurring opinion in that case, that ‘ the right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase “ pursuit of happiness ” in the Declaration of Independence, which commenced with the fundamental proposition that “ all men are created equal ; that they are endowed by their Creator with certain inalienable rights ; that among these are life, liberty, and the pursuit of happiness. ” This right is a large ingredient in the civil liberty of the citizen. ’ Again, on page 764, the learned justice said : ‘ I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States. ’ And again, on page 765 : ‘ But if it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, and giving to others the exclusive right of pursuing it, it certainly does deprive him (to a certain extent) of his liberty ; for it takes from him the freedom of adopting and following the pursuit which he prefers ; which, as already intimated, is a material part of the liberty of the citizen. ’ It is true that these remarks were made in regard to questions of monopoly, but they well describe the rights which are covered by the word ‘ liberty ’ as contained in the Fourteenth Amendment.

“ Again, in *Powell v. Pennsylvania*, 127 U. S. 678, 684, Mr. Justice Harlan, in stating the opinion of the court, said : ‘ The main proposition advanced by the defendant is that

his enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding and selling property, is an essential part of his rights of liberty and property, as guaranteed by the Fourteenth Amendment. The court assents to this general proposition as embodying a sound principle of constitutional law. It was there held, however, that the legislation under consideration in that case did not violate any of the constitutional rights of the plaintiff in error.

"The foregoing extracts have been made for the purpose of showing what general definitions have been given in regard to the meaning of the word 'liberty' as used in the amendment, but we do not intend to hold that in no such case can the state exercise its police power. When and how far such power may be legitimately exercised with regard to these subjects must be left for determination to each case as it arises.

"Has not a citizen of a state, under the provision of the federal constitution above mentioned, a right to contract outside of the state for insurance on his property—a right of which state legislation can not deprive him? We are not alluding to acts done within the state by an insurance company or its agents doing business therein, which are in violation of the state statutes. Such acts come within the principle of the Hooper case (*supra*), and would be controlled by it. When we speak of the liberty to contract for insurance or to do an act to effectuate such a contract already existing, we refer to and have in mind the facts of this case, where the contract was made outside the state, and as such was a valid and proper contract. The act done within the limits of the state under the circumstances of this case and for the purpose therein mentioned, we hold a proper act, one which the defendants were at liberty to perform and which the state legislature had no right to prevent, at least with reference to the federal constitution. To deprive the citizen of such a right as herein described without due process of law is illegal. Such a statute as this in question is not due process of law, because it prohibits an act which under the federal constitution the defendants had a right to

perform. This does not interfere in any way with the acknowledged right of the state to enact such legislation in the legitimate exercise of its police or other powers as to it may seem proper. In the exercise of such right, however, care must be taken not to infringe upon those other rights of the citizen which are protected by the federal constitution."

We cite this much of the decision of this court for the double purpose of showing that the word "liberty," as used in the Fifth Amendment, includes the liberty of making private contracts, and that the anti-trust act is not due process of law.

*Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 746, 762, 764, 765.

Indeed, we might have cited the fourth article of the constitution as a limitation upon the commerce power. We might also have relied upon the words "liberty, and the pursuit of happiness," as used in the Declaration of Independence, as a limitation upon the commerce power. This latter suggestion is in principle expressly laid down by the Supreme Court of Ohio in *State v. Ferris*, 53 Ohio St. 314.

If it were necessary to say any thing in support of the policy of maintaining the liberty of contract, we could not do better than to use the language of Sir George Jessel, M.R., in the case of *Printing and Numerical Registering Co. v. Sampson*, L.R., 19 Eq., at p. 465 :

"If there is one thing which more than any other public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting."

In developing this argument, we shall derive aid by referring to some well-settled principles laid down by this court. For instance, *Robbins v. Taxing District*, 120 U. S., 489, belongs to a class of cases which, in substance, decide that it is interstate commerce to negotiate or contract in one

state for the sale and delivery to the purchaser in that state of goods then located and owned in another state. Would it be said, however, that if certain citizens of the state in which the orders for such sales were solicited should enter into a contract not to entertain any such orders or make any such contract, they would be amenable to any form of action which might be brought under the anti-trust act?

Again, *Coe v. Errol*, 116 U. S. 517, 527, 528, and *Kidd v. Pearson*, 128 U. S. 1, 24, 25, decide, in substance, that an owner or manufacturer of goods within a particular state, who in good faith intends to transport his goods into another state the moment he is able to do so, can not escape taxation or the exercise of other lawful power on the part of the state in which the goods are located or manufactured. The principle of this class of cases evidently is that mental operation on the part of the owner of an article will not make the article a subject of commerce or the decision of the owner a part of commerce, no matter how serious in his conviction the owner may be. Suppose, then, a number of such owners or manufacturers should enter into a contract between themselves not to ship any of their products beyond the limits of their state or to sell the same for such purpose, would it be held that they thereby rendered themselves amenable to any form of action which could be brought under the anti-trust act?

It is to be observed of the class of persons making the first contract supposed, that they are simply placing upon themselves a voluntary obligation not to enter into interstate commerce; and the same thing is true as regards the class of persons making the supposed second contract.

It is to be observed, also, that we are engaged in the discussion of the power of congress to regulate commerce and not of any power of the state in which such persons reside to forbid such contracts.

If, under the hypotheses stated respecting contracts be-

tween individual citizens of a state, it should be said that the persons would render themselves amenable under the anti-trust act, then it would have to be shown that the liberty of contracting does not enable persons to bind themselves not to make contracts. The logic of any such claim is that even two persons could not do so. Yet, as it seems to us, it is not possible to differentiate such contracts from the principle laid down in ~~Robbins v. Tasting District on the one hand, and~~ *Coe v. Errol* and *Kidd v. Pearson* ~~on the other~~; because if any of the parties themselves to any such contract were to seek its annulment, they could only allege a purpose to import goods in the one case and to export them in the other if freed from the obligation of the contract. This would clearly leave them within state jurisdiction exclusively, and so deny to them the right to claim they were within federal jurisdiction. The mere purpose or intent to enter into interstate trade or commerce would not be sufficient to change their status.

Indeed, to say that congress could provide for thus controlling the freedom of contract of citizens of a state, would inevitably lead to the further right to prescribe attributes which should determine capacity of such persons to contract at all; to prescribe conditions upon which they could or could not enter into trade which would even indirectly involve interstate commerce; to prescribe and limit the conditions upon which suit should be brought or recovery be had upon contracts so authorized; and, in short, to prescribe by positive law a code of rights and wrongs and procedure respecting all such contractual relationships. Surely such an enlargement of power in congress is as difficult to understand as its logical and ulterior limits are difficult to forecast. It is always legitimate argument, however, to test the soundness of a claim by examining into the extremes which its logical tendency will lead to. Reflection here will render it

hard to see what function the states shall have if the power of congress is to be thus expanded.

Would not all such questions as we are discussing naturally belong to the states in which the contracts were made? Would not such evils, if evils they are, have to be remedied by those states either through their legislatures, their courts, or both? Do not the principles laid down in the *License Tax* cases (5 Wall. 462) require these questions to be answered in the negative? Is not the same true also of the principles announced in the *Civil Rights* cases (109 U. S. 3), when the commercial power and prohibition against Federal invasion of the liberty of contract, are read and construed together, and both are given due scope and effect?

It is to be observed that before these questions can be answered otherwise than in the negative, it must be shown that even if the anti-trust act had not been passed, any party to the contracts supposed could have invoked Federal jurisdiction to have the contract annulled, upon the sole ground that the commerce clause was violated; for it is settled that no legislation on the part of congress signifies free trade among the states.

When reduced to its last analysis, the real question is whether these men would, under their liberty of contracting, be entitled to make a choice of contracts. When entering into a contract not to engage in interstate trade or commerce, they would have the choice of either making that contract, or of making contracts respecting such traffic. To say that they shall not exercise this choice is to say that they shall not have the freedom of selecting the course which they think will best subserve their interests. Are those persons, or is congress, the better judge of which course they should pursue? What does the liberty of contract signify if the individual himself shall not have the untrammelled right of choice? We do not say that he should have the right to make contracts against the policy of his state. For



he owes it to his state so to preserve his freedom, as both to support himself and his family, and so avoid the necessity of his state having to support them. There is, however, no such reciprocity existing between a citizen of a state and the Federal Government, even though he is a citizen of the United States as well.

It seems to us that such contracts as those supposed would be beyond the reach of the federal control under two conclusions reached by this court in the Hopkins case, the one touching the right of persons to contract to abstain from telegraphing the conditions or quotations of the markets to persons in other states (171 U. S., at p. 599); and the other concerning the right by contract to limit the number of solicitors to be employed, the court saying of the latter:

“But cannot the citizen for what he thinks good reason, contract to curtail that right? To say that a state would not have the right to prohibit a defendant from employing as many solicitors as he might choose, proves nothing in regard to the right of individuals to agree upon that subject in a way which they may think the most conducive to their own interests. What a state may do is one thing, and what parties may contract voluntarily to do among themselves is quite another thing.” (*Ibid.*, at p. 603).

And further, in the same case, at p. 593, Mr. Justice Peckham had occasion to state some illustrations which seem to us apposite here. Referring to contracts made between private citizens which might affect interstate trade and commerce, and alluding to the transportation of cattle and their requirements for rest, food and water, the learned Justice said:

“Would an agreement among the land-owners along the line not to lease their lands for less than a certain sum be a contract within the statute as being in restraint of interstate trade or commerce? Would it be such a contract even if the lands, or some of them, were necessary for use

in furnishing the cattle with suitable accommodations? Would an agreement between the dealers in corn at some station along the line of the road not to sell it below a certain price be covered by the act, because the cattle must have corn for food? Or would an agreement among the men not to perform the service of watering the cattle for less than a certain compensation come within the restriction of the statute? Suppose the railroad company which transports the cattle itself furnishes the facilities, and that its charges for transportation are enhanced because of an agreement among the land-owners along the line not to lease their lands to the company for such purposes for less than a named sum, could it be successfully contended that the agreement of the land-owners among themselves would be a violation of the act as being in restraint of interstate trade or commerce? Would an agreement between builders of cattle cars not to build them under a certain price be void because the effect might be to increase the price of transportation of cattle between the states?" etc.

We may derive assistance too from the case of *Veazie v. Moor*, 14 How. 568. It is true that the question there involved was the right of the State of Maine to grant the exclusive privilege of navigating a certain portion of the Penobscot river to a certain company which was to improve it, the river being wholly within the state and being seriously obstructed, but in sustaining the enactment, this court, after speaking of the claim that certain products would become the subjects of foreign commerce, and consequently the statute was void, said at p. 574 :

"A pretension as far-reaching as this, would extend to contracts between citizen and citizen of the same state."

There is another way of testing the soundness of our contention. It is seriously urged by the solicitor-general that it was incompetent for these appellants to restrict competition even among themselves. Yet it was said by Mr.

Justice Peckham, in the Joint Traffic Case (171 U. S., at p. 567) :

"It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade."

How could "two or more producers" employ "the same person to sell their goods on commission" if those producers were at the same time in active, persistent, continuous competition among themselves? The very fidelity which an agent owes to his principal would render his position inconsistent and untenable. Those producers would have to agree upon common prices for the sale of their goods through such common agency. This would necessarily be a restriction of competition as between themselves. Yet, if the liberty of contracting does not extend as far as the learned justice states it, then we submit that the freedom thus guaranteed might as well be altogether denied. It is governing too much to forbid such arrangements. The converse of this, however, must likewise be so. If they may agree not so to compete, why may they not agree not to sell at all? Why may they not agree not to sell to particular persons, say non-residents? Why, in short, may they not agree not to enter into interstate trade or traffic?

Why, then, should not the claim we have urged from the beginning be the true one? That since the police power of the state is as broad as the taxing power (*Kidd v. Pearson*, 128 U. S. 1), and since all such contracts as we are considering would, under the hypotheses stated, be made at a time when both the individuals and their property would be within the jurisdiction of their state, and would consequently be subject to the ordinary municipal and taxing powers of the state, it should, we think, seem clear and convincing that the contracts themselves and the rights of the parties to

them would be subjects for state control and not federal control.

As is said by Mr. Chief-Justice Fuller in the Knight case, 156 U. S., at 13:

"It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality."

The result is that the anti-trust act should be construed as not intended to include private contracts.

True, the act was held to be constitutional in the *Joint Traffic* case. But the contract in that case was between quasi-public agencies concerning quasi-public property which was acquired and held and used to transport interstate commerce. The distinction has been argued. The reason for the anti-trust act is to be found in the need for constant regulation of the great public instruments of commerce among the states, but there is no need of the act to regulate merely private contracts; and to construe it as designed for that purpose is to ascribe to congress an intent to invade the citizen's freedom of contract, and also to usurp the state's municipal control of its citizens.

This can not be met by the class of decisions of this court which, in substance, hold that where the constitution vests power in congress over a subject, it will be construed to have bestowed the whole power, with appropriate means to carry it into execution; for those very decisions, as already

pointed out, recognize that the means adopted to carry out the powers must not themselves conflict with the constitution.

Profitable discrimination might be made here. For instance, certain principles laid down in decisions like those in the *License Tax* and *Civil Rights* cases, to the effect that constitutional prohibitions warrant annulment of acts passed in violation of them, but do not in the absence of express power authorize congress to adopt a system or code of laws either to enforce prohibitions or to prevent their violation. The Fifth Amendment is a prohibition. It is a prohibition against congress. It does not provide for its enforcement by laws of congress. Is it nevertheless to be said that the commerce clause supplies the authority? Such a claim is without precedent. It is without reason as well; for that would merge the prohibition into the power; it would be to destroy the one for the aggrandizement of the other.

The true solution lies in treating the prohibition as intended to forbid congress from invading the domain of private contract at all, under the guise of legislating to regulate commerce; or, in other language, in treating the Fifth Amendment as a limitation upon the commercial power. This will be in harmony with all the decisions since *Gibbons v. Ogden*, which hold that we must look to the constitution for limitations upon the commerce clause. It will not conflict either with any thing said in any other decision, say like that in the *Debs* case (158 U. S. 564); for there no constitutional limitation intervened.

It would be no answer to suggest that the liberty of contract does not warrant the making of invalid contracts. For the very inquiry is whether the matter of validity or not is within the purview of the federal constitution. The suggestion, therefore, begs the question. If the act of making a private contract is in the sense under debate the same as the act of passing a state statute, then the former act as well

as the latter may be made the subject of federal regulation, no matter whether the contract be in reality valid or invalid. If the two acts are not alike, it is because the liberty of contract protects the private citizen of a state against federal interference under the commercial power, and leaves him amenable alone in that regard to the state municipal law. This relegates the whole subject of validity or invalidity of private contract to the laws of the states. We do not claim that a state could *authorize* its citizens to make contracts to injuriously affect interstate trade or commerce. We concede that such act of *the state* would be an act falling within the commercial power. But the liberty of contract was not derived from the federal constitution. It was guaranteed by that instrument; and congress was forbidden to interfere with it. The citizen derived the liberty of contract from his Creator. "All men . . . are endowed by their Creator with certain inalienable rights; that among these are life, *liberty*, and the pursuit of happiness."

This inalienable right, liberty, including as it does the liberty of contract, was crystalized into the form of a guaranty through fear of encroachments on the part of the general government. In *Barron v. Mayor and City of Baltimore*, *supra*, Mr. Chief-Justice Marshall spoke of the reason for and the history of the Fifth Amendment thus:

"But it is universally understood, it is a part of the history of the day, that the great revolution which established the Constitution of the United States, was not effected without immense opposition. Serious fears were extensively entertained that those powers which the patriot statesmen, who then watched over the interests of our country, deemed essential to union, and to the attainment of those invaluable objects for which union was sought, *might be exercised in a manner dangerous to liberty*. In almost every convention by which the constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments



demanding security against the apprehended encroachments of the general government—not against those of the local governments.

“In compliance with a sentiment thus generally expressed, to quiet fears thus extensively entertained, amendments were proposed by the required majority in congress, and adopted by the states. These amendments contain no expression indicating an intention to apply them to the state governments. This court can not so apply them.” (*Italics ours.*)

In *Boyd v. United States*, 116 U. S. 616, after speaking of the Fifth Amendment (in connection with the Fourth) as a prohibition, and also of unconstitutional practices gaining their first footing “by silent approaches,” Mr. Justice Bradley, at page 635, said :

“This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property”—the learned justice would obviously have included liberty, if the case had called for its consideration—“should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principis.*”

## II.

BUT IF IT SHOULD BE HELD THAT THE COMMERCE CLAUSE WAS INTENDED TO REACH PRIVATE CONTRACT IN THE SAME SENSE AS A STATUTE OF A STATE, STILL IT IS CARRYING THE POWER OF CONGRESS FURTHER THAN IT WAS EVER BEFORE PRESSED, TO USE IT TO DESTROY PRIVATE CONTRACTS, WHICH ARE COLLATERAL TO THOSE MADE FOR THE PURCHASE, EXCHANGE OR TRANSPORTATION OF ARTICLES OF COMMERCE.

No definition of commerce has ever been made which includes such collateral contracts. It is true the definitions embrace contracts in their descriptions of what commerce includes, and, in consequence, of what the states can not interfere with. But what kind of contracts?

And here we wish to point out an error into which we think the solicitor-general has fallen. He says that, because the definitions of commerce include *contracts*, the contract between these appellants is included. But their contract was among *themselves*. It preceded in point of time every thing in the way of commerce. It involved no intercourse with strangers. It was a contract between themselves that they would not enter into commercial intercourse or negotiation or into contracts with any one except in a certain way and upon certain conditions. It is only the commercial contract—it is not the private contractual relationship between parties like these—which the definitions of commerce refer to.

The learned counsel, however, says that this distinction and argument would have applied to the *Trans-Missouri* and *Joint Traffic* cases. (B., p. 52.) But this ignores the difference between common carriers and their relations to their property on the one hand, and these appellants and their relations to their property on the other. The common car-

riers are *bound* to take articles from every body for transportation. They can not hold their roads and refuse business. Their roads are public highways—public instrumentalities of commerce—and the carrier companies are public agencies. All this, however, is different with private corporations organized to manufacture a private article, like cast-iron pipe. They are not bound to make or sell pipe. They can refuse to do either and still hold their property. They, in short, belong to the category of private individuals, respecting their private property and business. Now, these differences mark an important distinction with important consequences. The common carriers have not, and private persons have, exclusive dominion and control over their properties. When, therefore, the common carriers agree among themselves not to do business except on conditions to suit themselves, they violate the law. If they are interstate carriers, as they were in the *Trans-Missouri* and *Joint Traffic* cases, they violate the anti-trust law. They are public bodies, and, when so contracting, are guilty of public acts, the same as if the states themselves which authorized their corporate being and traffic were to do such acts. But none of these things are so in respect of private corporations or persons. They are simply in the exercise of private rights, respecting private property, when agreeing to refuse to contract except upon conditions. They are in the exercise of the liberty of contract. They are engaged in collateral undertakings, therefore, radically different from those of public interstate common carriers. The solicitor-general evidently saw this when he vainly tried to show that the manufacture and sale of cast-iron pipe is a matter of public concern in the sense that the property bears the impress of a public nature or character.

We recognize that in this branch of the argument we have necessarily repeated portions of the argument made on the question of total want of power in congress to reach

private contracts. But the truth is that much of that argument will apply with equal force to the feature we are now arguing. For when we contend, as we do, that no private contract is within the control of congress, we necessarily include all private contracts. We are now, however, arguing that even though it would reach private contracts, it would not reach all kinds of private contracts. The commercial power could not, in any event, fairly be said to have been intended to apply to any sort of private contracts except those which control, and inevitably involve, interstate trade or commerce. The contract with which we are concerned here was, as stated, wholly collateral to any commercial contract.

There is another view in which the collateral nature of the contract in question may be seen. It was said in the *Knight* case that "commerce succeeds to manufacture." Sales are a part of commerce. Sales of pipe must, therefore, succeed to manufacture. It follows that if commerce succeeds to manufacture sales also must succeed to manufacture. The contract, however, which is assailed in the present cause precedes both manufacture and sales. How, then, can it be said to be any thing except an arrangement collateral to every thing included within any definition or meaning of commerce?

The whole scope of commerce among the states has been defined by such cases as *Coe v. Erroll*, *Kidd v. Pearson* and *United States v. E. C. Knight Co.* These cases mark the boundaries between which is included the whole commerce that is subject to national regulation, and over which congress has full and exclusive control. This commerce is thus described by Mr. Chief Justice Fuller in the *Knight* case (156 U. S., at 13): "Contracts to buy, sell, or exchange goods to be transported among the several states, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the states,

or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce."

This is a definition of commerce under the anti-trust act, and as thus stated, it includes the contracts of purchase or sale that initiate a transportation from one state to another and that end the transportation; it also includes the instrumentalities and means of transportation.

Within the limits thus stated congressional power is full and exclusive. The articles of commerce while in transportation are likewise the subject of regulation under the constitution, so that cattle or commodities while in the course of transportation may be the subject of national inspection laws or police regulations controlling them in transit. But the only *contracts* within the power to regulate commerce are contracts to *buy* or *sell* and which initiate or end a transportation.

It is now asked to extend the rule, as heretofore adjudged, so as to bring within the scope of the commerce clause all that great variety of contracts that may operate to hinder "contracts to buy, sell, or exchange goods to be transported."

This extension will carry the Federal Government into that field which Chief-Justice Marshall designated as "that immense mass of legislation, which embraces every thing within the territory of a state, not surrendered to the general government; all which can be most advantageously exercised by the states themselves."

*Gibbons v. Ogden*, 9 Wheat. 203.

In the same case, at page 194, a part of this "immense mass of legislation" is referred to as "that commerce, which is completely internal, which is carried on between man and man in a state."

The contracts which restrain or hinder "contracts to buy, sell, or exchange goods to be transported," are com-

pletely internal and between man and man within a state. But as they do or may—though only indirectly—restrain or hinder the contracts that are a part of the external commerce, the solicitor-general asks that the jurisdiction of the general government be extended so as to include them.

### III.

#### ERRONEOUS INFERENCES FROM SECRESY AND CERTAIN ACTS OF SPECIAL INDIVIDUALS.

There are two features of the contention made on the part of the government in relation to the evidence, to which we wish briefly to call attention. One is that these appellants did their work secretly and with a view of deceiving the public. But is the secrecy under which a business is conducted the necessary and true test of its validity? Men differ materially in their methods of conducting the same class of business. Some will make large display of every thing they do, while others will conceal their plans and methods altogether. If these appellants had done openly what some or all of them did secretly, it is doubtful whether any one would have placed any severe criticism upon their acts. If they had declared their purpose to exercise their liberty of contract and deal with people only as they chose and upon such conditions as suited them, who could rightfully have complained? We do not mean by this to argue any question of morals. We seek only to show and emphasize the irrelevancy of the criticism of secrecy upon the question of interference, either in design or effect, with interstate commerce. How could it have affected that at all?

Another feature is that the solicitor-general seizes upon letters or statements of one or two individuals, such as Mr. Thomasson, and the informer, McClure, and makes them the basis for severe criticism. It will be borne in mind that



McClure was Thomasson's private secretary. Now, whatever may have been Mr. Thomasson's individual views touching process or methods of doing business, surely we do not obtain an accurate survey of the views and conduct of all of the parties to the plan or agreement through Mr. Thomasson alone or his private secretary. They were not in harmony with the others. They, therefore, do not and can not reflect the views and methods of business of the others.

But, however these matters may be, it seems to us that counsel is taking a narrow view of a very broad subject to seize upon occasional sayings of a particular person in order to characterize the whole transaction, and so try to divert attention from the real question and its larger scope and meaning. The question whether this contract or arrangement can be reached under the power to regulate commerce is of far broader significance than the mere method of its execution.

We have now reached a point where our original briefs present all the authorities and arguments we wish to offer in support of our contention that the plan in question here and its execution could not, and in truth did not, affect interstate trade or commerce in any manner, except indirectly and remotely, and without any purpose or intent on the part of any of appellants to affect such trade or commerce in any manner whatever.

Respectfully submitted,

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FRANK SPURLOCK,

*For Appellants.*

BROWN & SPURLOCK,  
PAXTON, WARRINGTON & BOUTET,

*Counsel.*

# **In the Supreme Court of the United States.**

OCTOBER TERM, 1898.

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THE ADDYSTON PIPE AND STEEL Company, Dennis Long & Co., Howard-Harrison Iron Company, Anniston Pipe and Foundry Com- pany, South Pittsburg Pipe Works, and Chattanooga Foundry and Pipe Works, appellants, v. THE UNITED STATES.	} No. 269.
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## **BRIEF FOR THE UNITED STATES.**

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### **STATEMENT.**

By direction of the Attorney-General, this suit was brought in the circuit court of the United States for the eastern district of Tennessee, on December 10, 1896, against the following corporations, to restrain them from continuing to violate the act of July 2, 1890, by operating under an alleged illegal combination:

The Addyston Pipe and Steel Company, of Cincinnati, Ohio.

Dennis Long & Co., of Louisville, Ky.

Howard-Harrison Iron Company, of Bessemer, Ala.

Anniston Pipe and Foundry Company, of Anniston, Ala.

South Pittsburg Pipe Works, South Pittsburg, Tenn.

Chattanooga Foundry and Pipe Works, of Chattanooga, Tenn.

These six corporations are engaged in the manufacture of cast-iron pipe used by municipal and other corporations for gas, water, sewer, and other purposes. The bill charges them with carrying on a combination, in restraint of trade or commerce among the several States, for the purpose of suppressing competition among themselves, and for arbitrarily fixing and maintaining the prices of cast-iron pipe.

#### THE PROCEEDINGS.

By stipulation (Rec., p. 288) the application for an injunction was treated as a hearing upon the merits, and the case was submitted to the circuit court upon the bill, the answer, and the affidavits. Judge Clark dismissed the bill on the merits (Opinion, Rec., pp. 275, 287; 78 F. R., 712, 724). The circuit court of appeals (Mr. Justice Harlan and Judges Taft and Lurton) reversed the judgment of the circuit court and remanded the case "with instructions to enter a decree for the United States perpetually enjoining the defendants from maintaining the combination in cast-iron pipe described in the bill, and substantially admitted in the answer, and from doing any business thereunder." (Opinion, Judge Taft, Rec., pp. 293, 327; 85 F. R., 302.)

## THE PLEADINGS.

## THE PETITION (Rec., pp. 2-9).

The petition charges :

3. The defendants are the only persons engaged in manufacturing cast-iron pipe who have the capacity to supply the demand in thirty-six States and Territories named, being those west of New York and Pennsylvania and south of Virginia.

There are a few other pipe works located in the above territory, but for want of capacity they are unable to compete with defendant \* \* \* and have been practically driven out of the market.

4. The defendants, in order to monopolize the trade in cast-iron pipes in the above territory, and force the price to an unreasonable rate and destroy all competition, on December 28, 1894, entered into a contract or combination, in the form of a trust or conspiracy, in restraint of trade or commerce among the several States and Territories named, in regard to the manufacture and sale of cast-iron pipe. The name of the conspiracy is the "Associated Pipe Works." The defendants since said date have been operating their shops under said agreement, "and are now engaged in selling and shipping from their shops said cast-iron pipe into other States and Territories than the States and Territories in which defendant resides, and under contract entered into with citizens of such other States and Territories."

5. In order to prevent competition in the pay territory, a bonus was charged on every ton of pipe sold therein, the amount being determined "by how much the combi-

nation could force the customers to pay." A bonus ranging from three to nine dollars has been collected, which represents "the amount charged for pipe over and above a reasonable and fair price for same, and above the price that defendant would be willing to sell for if the trust or combination did not exist." The output of the six shops amounts to about 220,000 tons; multiplied by the average bonus of \$6 per ton, this amounts to \$1,320,000. The petition charges that the amount of pipe sold and shipped in 1896 will exceed 220,000 tons.

6. In the pay territory, except the reserved cities, each shop could sell its pipe at what price it saw proper, but it had to account to the trust for the bonus. The bonuses were distributed every two weeks. The division of profits thus brought about prevented competition.

7. In order to make the combination effective, all quotations made before it was consummated were withdrawn and new quotations advancing the price from three to nine dollars a ton prepared.

8. As a part of the combination, certain cities were reserved for individual defendants. The Anniston Pipe Works was to supply Atlanta, the Howard Harrison Company, Birmingham and St. Louis; the Chattanooga Works, Chattanooga and New Orleans; the South Pittsburg Works, Omaha; Dennis, Long & Co., Louisville and certain cities in Indiana; while the Addystone Company was to supply Cincinnati and other cities in Ohio and Kentucky. When an inquiry for bids was received from a reserved city, the shop to which the city was reserved would be requested to name the price which the other shops should "protect." This done, the other shops would bid over the price to be "protected," thus

insuring the job unto the shop which "owned" the city, and a fat bonus for division among its "competitors."

9. The principal contracts obtained by the defendants have been for gas, water, and sewer pipe, which are publicly let to the lowest bidders. By the scheme described the defendants, through fraud and collusion, have secured most of these contracts at exorbitant prices.

10. There are no pipe works in the pay territory outside the combination with capital or capacity sufficient effectively to prevent the operation of the monopoly created by the combination.

11. About May 27, 1895, the defendants abandoned the fixed bonus for the "auction-pool plan" in the pay territory. This was done because the fixed bonus had not resulted in the anticipated advancement in price of pipe. By the auction-pool plan a central committee composed of representatives from each shop fixed the price for the jobs. The price being fixed, the representatives, in their secret meeting, bid against one another for the job, the shop bidding the biggest bonus taking the contract. The private-auction pool having thus fixed the price and determined who should get the job, the other shops protected the price by bidding over it, thus deceiving the purchaser by the pretense of competition.

12. During the early part of 1896 St. Louis wanted about 5,000 tons of cast-iron pipe. St. Louis was allotted to the Howard Harrison Company, of Bessemer, Ala. The price of pipe at Bessemer was from \$13 to \$15 per ton. The freight from Bessemer to St. Louis was \$3 per ton, so the fair price of the pipe delivered at St. Louis was from \$16 to \$18 a ton. The combination



fixed the price at \$24 per ton, the Howard Harrison Company bidding that price and the other shops protecting its bid by higher ones. As a result, St. Louis was compelled to pay from \$6 to \$8 per ton more than the defendants were selling the same pipe for in free territory, or between \$30,000 and \$40,000, which, treated as a bonus, was divided among the defendants.

**DEMURRER AND ANSWER (Rec., pp. 25-35).**

The defendants demurred because it did not appear from the terms of the contract or combination, as alleged), that it undertook directly to restrain or monopolize trade or commerce among the several States (pp. 25, 26), and answered:

1. Cast-iron pipe is not a commodity in general use, but is made for special purposes, may be produced in unlimited quantities, and is generally sold under contract requiring it to conform to certain specifications.

3. The defendants are not the only persons manufacturing pipe in the pay territory. There are nine other shops in this territory, with a daily capacity of about 835 tons. There are besides ten or more other pipe works outside the pay territory, with a daily capacity of 1,550 tons. The defendants have not driven any competing companies out of the pay territory. They deny that they entered into the agreement of December 28, 1894, for any unlawful purpose; they admit that "each of the respondents did, about the time stated, become members of an association formed for the mutual benefit of its members, and on a plan of cooperation which in no manner referred to interstate commerce, or illegally

restrained the trade of themselves, or any others, as will be hereinafter fully explained."

5. It is true, as charged in paragraph 9 of said petition, *that all contracts secured by them were, in the main, contracts to furnish pipe to gas, water, and municipal corporations, let to the lowest bidders after advertising for bids*; that defendants and all other persons engaged in the same business were appealed to by said gas, water, and municipal corporations, or were invited or permitted to furnish bids at which they would do certain work. It was the option and probably the duty of said corporations to let their work by biddings, instead of making contracts or buying in the open market.

Previous to December 28, 1894, or about that date, defendants had bid on such occasions against each other and other companies proposing to take such contracts, *and the competition provoked by this mode of dealing* secured to said gas, water, and municipal corporations the advantage of ruinous competition to the bidders, while said bidders had no other market in which to dispose of their product. In this manner of buying pipe, and letting all their contracts, the customers prevented the establishment of market prices, and kept the manufacturers constantly arrayed against each other, with strong motives not only to underbid but to otherwise injure the business of each other.

*To meet this situation*, defendants joined an association for their mutual protection in lessening expenses, securing better freight rates, etc., and as such members had an understanding among themselves, the sole object of which was to secure a fair share of work for each, according to their relative capacity, and to enable each one to continue in

operation, but not for the purpose of monopolizing or restraining either State or interstate trade or commerce. In fact, they are advised, that from the manner in which said gas, water, and municipal corporations bought their pipe and let their contracts, their dealings were of local character, and could not be the subject of interstate commerce. No one of the defendants was restrained from securing work, and the only restraint that might be implied in said arrangement was the understanding that each of defendants was entitled to share in a certain limited portion of the price paid on said contracts, according to their relative capacity.

As a means of securing this, a bonus was provided on all contracts within the pay territory. The price of pipe was fixed by competition and was not affected by the bonus, which was more in the nature of a premium, its object being "to restrain any one or more of defendants from monopolizing more than a proper share of trade in any State or Territory." The bonus being deducted from a fair price, restrained each shop from doing more than its proper share of work.

7. "They are advised that there was no legal obligation rested on them to bid more on contracts than their rivals, or refrain from agreeing on a reasonable measure of restraint as among themselves, so that each of them could do its proper share of work."

8. On or about May 27, 1895, they changed the arrangement theretofore existing for fixing the premium. This change was made (p. 32) "*to guard against competition which was unfair and ruinous, and to make it to the interest of each of the defendants, as members of an*

association formed for mutual advantages, to accord to the others a fair share of the work left, and at such reasonable prices as would enable all to continue in business.

The arrangement was as follows: On receiving notice that a contract for pipe was to be let, their representatives met and "jointly agreed in advance" on a price for the pipe, which was reasonable. This done, the question as to which of them should secure the contract was determined by the "largest premium" offered. The price fixed "was only adopted as a fair price, and constituted a basis upon which the defendants *could intelligently compete* among themselves."

9. The St. Louis contract was let under certain specifications, bond being required to comply with them. Before the contract was advertised, the officials of St. Louis had fixed the sum of \$25 per ton as the price which should be secured. The contract was let wholly within the State of Missouri, and was not an act of interstate trade or commerce.

#### **THE UNLAWFUL COMBINATION.**

MEETING DECEMBER 28, 1894. CHATTANOOGA.

Prior to December 28, 1894, The Anniston, The Bessemer, The Chattanooga, and The South Pittsburg companies had been associated in business as "The Southern Associated Pipe Works." On that day, at a meeting of The Southern Associated Pipe Works at their office in Chattanooga, the following proposition

was submitted for admitting to membership the Cincinnati and Louisville companies (Rec., pp. 64, 65):

First. The bonuses on the first 90,000 tons of pipe secured in any territory 16" and smaller sizes shall be divided equally among six shops.

Second. The bonuses on the next 75,000 tons 30" and smaller sizes to be divided among five shops, South Pittsburg not participating.

Third. The bonuses on the next 40,000 tons 36" and smaller sizes to be divided among four shops, Anniston and South Pittsburg not participating.

Fourth. The bonuses on the next 15,000 tons consisting of all sizes of pipes shall be divided among three shops, Chattanooga, South Pittsburg, and Anniston not participating.

The above division is based on the following tonnage of capacity:

	Tons.
South Pittsburg.....	15,000
Anniston.....	30,000
Chattanooga.....	40,000
Bessemer.....	45,000
Louisville.....	45,000
Cincinnati.....	45,000

When the 220,000 tons have been made and shipped and the bonuses divided as hereafter provided, the auditor shall set aside into a "reserve fund" all bonuses arising from the excess of shipments over 220,000 tons and shall divide the same at the end of the year among the respective companies according to the percentage of the excess of tonnage they may have shipped (of the sizes made by them) either in pay or free territory. The above proposition is intended to include all ordinary pipe specials in the tonnage named. It is also the intention of this proposition that the bonuses on all pipe

larger than 36 inches in diameter shall be divided equally between the Addyston Pipe and Steel Company, Dennis Long & Co., and the Howard Harrison Iron Company.

In submitting this proposition the chairman of the meeting stated that (Rec., p. 65) "the object of the meeting was to determine whether the Louisville and Cincinnati shops would be willing to become members of the association. He went over the ground and dwelt on the advantages that would result from an association as it could be conducted by the six shops, and also presented the disadvantages of working separately—the *cutting of prices* and other disastrous consequences that had resulted in the past from disorganization, jealousy, and *rivalry in business*."

The proposition was adopted, and it was then resolved (Rec., bottom pp. 65, 66, 67):

First. That this agreement shall last for two years from the date of the signing of same, until December 31, 1896.

Second. On any question coming before the association requiring a vote, it shall take five affirmative votes thereon to carry said question, each member of this association being entitled to but one vote.

Third. The Addyston Pipe and Steel Company shall handle the business of the gas and water companies of Cincinnati, Ohio, Covington and Newport, Ky., and pay the bonus hereafter mentioned, and the balance of the parties to this agreement shall bid on such work such reasonable prices as they shall dictate.

Fourth. Dennis Long & Company, of Louisville, Ky., shall handle Louisville, Ky., Jeffersonville,



Ind., and New Albany, Ind., furnishing all the pipe for gas and water works in above-named cities.

Fifth. The Anniston Pipe and Foundry Company shall handle Anniston, Ala., and Atlanta, Ga., furnishing all pipe for gas and water companies in above-named cities.

Sixth. The Chattanooga Foundry and Pipe Works shall handle Chattanooga, Tenn., and New Orleans, La., furnishing all gas and water pipe in the above-named cities.

Seventh. The Howard-Harrison Iron Company shall handle Bessemer and Birmingham, Ala., and St. Louis, Mo., furnishing all pipe for gas and water companies in the above-named cities; extra bonus to be put on East St. Louis and Madison, Ill., so as to protect the prices named for St. Louis, Mo.

Eighth. South Pittsburg Pipe Works shall handle Omaha, Nebr., on all sizes required by that city during the year of 1895, conferring with the other companies and cooperating with them; thereafter they shall handle the gas and water companies of Omaha, Nebr., on such sizes as they make.

NOTE.—It is understood that all the shops who are members of this association shall handle the business of the gas and water companies of the cities set apart for them, including all sizes of pipe made by them.

The following bonuses were adopted for the different States as named below: All railroad or culvert pipe or pipe for any drainage or sewerage purposes on 12-inch and larger sizes shipped into bonus territory shall pay a bonus of \$1 per ton. On all sizes below 12-inch and shipped into "bonus territory" for the purposes above named there shall be a bonus of \$2 per ton.

*List of bonuses.*

Alabama .....	\$3.00	Ga. coast pts.....	\$1.00
B'gham, Ala.....	2.00	Idaho .....	2.00
Anniston, Ala.....	2.00	Nev .....	3.00
Mobile, Ala .....	1.00	Oklahoma .....	3.00
Arizona Ter .....	3.00	Wis .....	2.00
California .....	1.00	Texas, interior .....	3.00
Colorado .....	2.00	Texas, coast.....	1.00
Ind. Ter.....	3.00	Wash'ton Ter.....	1.00
North C.....	1.00	Michigan.....	1.50
Tenn., east of C'-Land.	2.00	West Va.....	1.00
Tenn., middle and		Kansas .....	2.00
west.....	3.00	Ky .....	2.00
Illinois, except Mad-		La .....	3.00
ison and East St.		Miss .....	4.00
Louis, as previously		Mo .....	2.00
provided.....	2.00	Montana .....	3.00
Wyoming .....	4.00	Nebraska.....	3.00
Oregon .....	1.00	N. Mex .....	3.00
Ohio .....	1.50	S. C .....	1.00
N. D .....	2.00	Minn .....	2.00
S. D.....	2.00	Utah .....	4.00
Florida .....	1.00	Indiana .....	2.00
Georgia .....	2.00	Iowa .....	2.00
Atlanta, Ga .....	2.00		

All other territory free.

On motion of Mr. Llewellyn, the bonuses on all city work as specially reserved shall be \$2 per ton.

It was further agreed at this meeting (Rec., p. 67):

First. That every order shall be reported daily, whether from free territory or bonus territory.

Second. Reports of shipments shall be made on the 1st and 16th of each month, the auditor being authorized to draw on each company at sight for debit balances for time reported.

Third. That every member shall file with the auditor a report of all orders booked when the association goes into effect, and only the orders thus reported shall be exempt from bonus payments in pay territory. At this

time, all quotations made previous to the agreement are to be withdrawn unless the members are willing to pay the bonus established.

MEETING JANUARY 22, 1895, CHATTANOOGA.

At a meeting of the Associated Pipe Works, at Chattanooga, January 22, 1895, by-laws were adopted, which are printed in the record, pages 68 and 69. These by-laws provide:

For an executive committee, of one member from each company ;

For a chairman, to preside at meetings, call special meetings, and have general supervision of the affairs of the association ;

For an auditor and assistant auditor.

Each shop shall report daily to the auditor all orders secured in bonus or free territory ; and on the 1st and 16th of each month, all shipments made in all territory, showing among other things "the amount of bonus and tonnage, of the bonus as well as free territory."

The auditor shall make carbon copies daily of all reports received and send one to each shop. He must keep such records and accounts as will enable him to give at all times the exact status of the affairs of the association. On the 1st and 16th of each month he shall send to each shop "a statement of all shipments reported in the previous half month, with a balance sheet showing the total amount of the premium on shipments, the division of the same, and a debit-credit balance of each company."

## MEETINGS MAY 16 AND 27, 1895, LOUISVILLE.

The system of fixed bonuses as a means of restricting competition and maintaining prices proved unsatisfactory. Accordingly, at the meeting held at Louisville May 16, 1895, the following resolution was offered (Rec., p. 70), which was adopted at the meeting held at the same place May 27, 1895 (Rec., p. 71):

## THE AUCTION POOL.

Whereas the system now in operation in this association of having a "fixed bonus on the several States" has not in its operation resulted *in the advancement in the prices of pipe, as was anticipated, except in "reserved cities,"* and some further action is imperatively necessary in order to accomplish the ends for which this association was formed: Therefore be it

*Resolved*, That from and after the 1st day of June that all competition on the pipe lettings shall take place among the various pipe shops *prior to the said letting.* To accomplish this purpose it is proposed that the six *competitive* shops have a "representative board" located at some central city, to whom all inquiries for pipe shall be referred, *and said board shall fix the price at which said pipe shall be sold,* and bids taken from the respective shops for the privilege of handling the order and the party securing the order *shall have the protection* of all the other shops. Should it be deemed best for the interest of this association to eliminate the Southern territory from the control of "the general pool" and refer all lettings in said territory to the Southern shops for their exclusive action, upon the agreement of the four Southern shops to pay this association the fixed

bonus now in force in said Southern States, said Southern shops to have the option of doing so.

This was the "auction pool." In its practical operation the following exception was made at the meeting of May 27, 1895 (Rec., p. 71):

When an inquiry is reported to which a member can properly establish a claim as a special customer, such inquiry should not be disposed of by the "auction basis," but shall be handled by such member, *the committee fixing the price and bonus*, such price and bonus to be commensurate with prices and bonuses at the time such inquiry shall be reported.

At this meeting it was also agreed (Rec., p. 71) that the question of continuing the association beyond December 31, 1896, should be taken up and decided by the association between the 1st and 15th day of July, 1896.

To carry out the "auction pool" rule it was agreed (Rec., p. 71) "that all parties to this association having quotations out shall notify their customers that the same will be withdrawn by June 1, 1895, if not previously accepted; and upon all business accepted on or after June 1 bonuses shall be fixed by the committee."

#### MEETINGS DECEMBER 19 AND 20, 1895, CHATTANOOGA.

At the meeting held at Chattanooga December 19, 1895, it was resolved (Rec., p. 72):

That upon all inquiries for prices from "reserved cities" for pipe required during the year of 1896, *that prices and bonus shall be fixed* at a regular or called meeting of the principals.

At this meeting it was also proposed to move the headquarters from Cincinnati to Chicago (Rec., p. 72), and this was done on ——— (Rec., p. —).

At the meeting on December 20, 1895, the plan for the division of bonuses originally adopted (Rec., pp. 64, 65), was modified by making the basis the amounts shipped into "pay territory," instead of into any territory, free or pay.

#### MEETING FEBRUARY 14, 1896, CINCINNATI.

At the meeting of February 14, 1896, at Cincinnati, it was resolved that (Rec., p. 76):

All jobs sold previous to January 1, 1896, by the committee that are not closed in thirty days from this date shall be canceled and resold, and in future no member buying a job shall be allowed longer than sixty days after the action of the committee in which to close the same, etc.

#### FIXING BONUSES AND BUYING JOBS.

#### MEETING MAY 16, 1895, AT LOUISVILLE (Rec., pp. 69, 70).

The bonus for Dayton, Ohio, was fixed at \$3 for the first 200 tons, and \$2 for the balance of the tonnage to make up the year's supply.

The bonus on Port Clinton, Ohio, was fixed at \$2, instead of \$1.50.

On motion, it was declared that whenever an order is reported by any shop, and a doubt exists as to the proper bonus to be paid, that it be reported, with the facts in the case, to be acted upon at the next meeting of the executive committee.



On motion, it was resolved that any party having reported a *bona fide* time contract upon which a bonus is to be paid shall be entitled to the protection of the other members of the association.

The Addyston reported a contract with the Big Four Railroad for all culvert pipe to be used during 1895, and the same was subject to bonus.

On motion, the additional 25.cents per ton specified by Anniston for Shelby, Mich., be charged at \$1.50 bonus, and other additional orders be paid for at current bonus in force at the time such orders are reported.

MEETING DECEMBER 19, 20, 1895, CHATTANOOGA (Rec., pp. 72, 74).

The bonus for pipe supplied by the Addyston Company for Westwood was corrected to \$2, and the bonus on the Riverside contract, let December 14, was fixed at \$2 (p. 72).

Dennis Long & Co. were allowed to close contract for the year 1896 with the Louisville Water Company at the best price they can obtain for the same, and after securing contract refer the same to the meeting of the principals to fix bonus.

The bonus on the Illinois Central order was put back to \$5 (Rec., p. 93).

W. L. Davis moved to sell the 519 pieces of 20-inch pipe for Omaha, Nebr., for \$23.40 delivered. Carried (p. 74).

F. B. Nichols moved that Anniston participate in this bonus *and the job was sold over the table*. Carried.

Pursuant to the motion the 519 pieces of 20-inch pipe for Omaha were sold to Bessemer *at a premium of \$8* (p. 74).

MEETING FEBRUARY 14, 1896, AT CINCINNATI (Rec., pp. 74-76).

Dennis Long & Co. *having paid J. B. Clow & Sons* 35 cents per ton in order to secure an order from A., T. & S. F. R. R. Co. of 1,500 tons, it was ordered that the same be deducted from the bonus fixed on that job.

The bonus on sales memorandum 118 secured by Bessemer under their shop No. 54 was declared to be sold \$8.95 as originally fixed when the job was sold to Chattanooga, on inquiry from W. L. Cameron, Kansas City, Mo.

On motion, the bonus on Bessemer's order No. 52 for Birmingham Gas Company was fixed at \$5, the order being 66 tons from "reserved city" and larger than a small routine order. It was referred to the principals for action.

On motion, the following bonuses were fixed (Rec., p. 75):

Chicago Gas Company, George Knapp, 7,000 to 10,000 tons, year's requirement; prices, \$22 for 6 and 8 inch and \$21.50 for larger sizes, and 2 cents for specials on cars Chicago, bonus fixed on same, \$5.

Calumet Gas Company, Calumet, Ill., requirements for the year not exceeding 1,500 tons; prices, \$23.50 for 4-inch and \$22 for 6 and 8 inch, and \$21.50 for larger sizes, and 2½ cents for specials; bonus fixed, \$5.

Northwestern Gas Light and Coke Company, Evanston, Ill., requirements for the year not exceeding 1,500 tons; prices, \$23.80 for 4-inch and \$23.30 for 6 and 8 inch, and \$21.80 for 10 and 12 inch, and 2½ cents for specials; bonus fixed at \$5.

Louisville Water Company, Louisville, Ky., 700 pieces of 8-inch, 2,500 pieces of 6-inch, and 300 pieces of 4-inch; price, \$22.50 in water company's yard;

drayage, 35 cents per ton; bonus fixed on same, \$6.50.

La Clede Gas Company, St. Louis, Mo., 3,248 tons; prices, \$25 for 4-inch, \$24 for 6, 8, 10, and 12 inch, and \$22.75 for 16, 18, and 20 inch, delivered on street; drayage, about \$1 per ton; bonus fixed, \$5.65.

St. Louis Water Company, city of St. Louis, Mo., 2,800 tons, 35 tons 3-inch, 100 tons 4-inch, 1,200 tons 6-inch 'A', 300 tons 6-inch 'B', 1,200 tons 12-inch 'A', and 4 tons 8-inch 'A' (2,839 T.); prices \$24, switching and drayage 40 cents; bonus fixed on above, \$6.50.

C., R. L. & P. R. R., Keokuk, Chicago, St. Joe delivery, Keokuk and Chicago delivery, \$22.35; St. Joe delivery, \$24—contract for year's supply. Present specifications \$20.24, 36 and 42 inch, about 702 tons; bonus fixed on the same, \$7.50.

C., B. & Q., St. Louis delivery, \$21, year's supply. Bonus fixed on the above, \$6.50.

Indianapolis Water Company, bonus fixed on the same, \$4.20. Above includes year's supply, about 1,000 tons, price \$20.70.

MEETING MARCH 13, 1896, CHICAGO (Rec., p. 76).

*Ordered*, That if, in the judgment of Dennis Long & Co., they deemed it to be for the best interest of this association to reduce the price of pipe to the Chicago Gas Company 50 cents per ton, they be allowed to do so, and the "bonus" be reduced accordingly.

Moved that "bonus" on Anniston's Atlanta Waterworks contract be fixed at \$7.10, provided freight is \$1.60 a ton. Carried.

The following bonuses were fixed:

On Anniston's U. G. I. Co.'s orders for all destination as now reported, \$5; on all companies voting

"aye," except South Pittsburg, on the Omaha order, they voting "no" on that order.

The following motion was offered by W. L. Davis: It having been demonstrated that sales memos. Nos. 107 and 118 are the same inquiry, the committee's action on 118 is hereby cancelled, and the "bonus" on 107 reduced to \$6.55, to equalize the reduction of \$1 per ton made by Bessemer to meet the price made by Shickle-Harrison & Howard Iron Company. Carried.

#### PRACTICAL OPERATION OF THE AGREEMENT.

The record contains an interesting exposé of the working of the agreement with respect to contracts let in different cities:

*Atlanta.*—This city was reserved to the Anniston Company, of Bessemer, Ala., which paid a bonus of \$2 per ton (Rec., p. 66), until it was provided, on December 19, 1895, that such bonus should be fixed at a meeting of the principals (p. 72).

On February 15, 1896, Chattanooga wrote Anniston as follows (Rec., p. 82):

We have the following inquiry from the Atlanta Water Works office, approximately:

Fifteen hundred feet 12-inch pipe, also about 10,000 feet of pipe varying from 6 to 10 inches, with a lot of special castings. They state that they are not prepared to give amount of different sizes, but will give order in good time after contract has been awarded. They ask for reply on or before the 18th instant, and you will therefore please advise us at once as to what price you desire us to protect on this contract.

To this Anniston replied the same day (Rec., p. 83):

Please protect \$24 on approximately 375 tons of cast-iron pipe for the city of Atlanta, Ga., on which we are asked to-day for prices. *We have sent a man over to Atlanta and will get as much more as possible.*

This price was nearly \$10 per ton (less cost of transportation) over what would be a paying profit at Chattanooga (see Thommasson's letter, Rec., top p. 94). Chattanooga, however, on February 17, protected Anniston by bidding \$24.50 per ton delivered on board cars at Atlanta, saying with refreshing ingenuousness, "We can give you a prompt delivery on above pipe, *and would be pleased to receive your order.*"

A lower bid had been received from R. D. Wood & Co., of Philadelphia, Pa., but all bids were rejected by the Atlanta people, as they were "extremely high" (Rec., p. 83). The bids thus rejected gave a good example of the method by which these companies "protected" each other, and incidentally led the consumer to suppose the prices reasonable. They were (Rec., p. 44):

Anniston, \$24; Bessemer, \$24.25; South Pittsburg, \$24.25; Chattanooga, \$24.50.

The bids being rejected, the Atlanta waterworks wrote Chattanooga, and Chattanooga forwarded the letter to Anniston in the following communication of February 21, 1896 (Rec., pp. 83, 84):

We have received the following letter under date of February 19, 1896, from the Atlanta waterworks office:

"ATLANTA, GA., *February 19, 1896.*

"Bids for pipe were opened at the meeting of board of water commissioners this a. m., and as all bids *were*

*extremely high*, it was moved and adopted that all bids be rejected. Will say that the lowest bid was from R. D. Wood & Co., Philadelphia, Pa. Under such circumstances we would ask if it is not possible for a lower bid to be made *from those who are so near this point, you might say right at our door*. Hoping to hear more favorably from you at an early date, we remain, with much respect,

“Very truly, yours,  
(Signed) “W. B. TARBETT, Sec’y.”

We wired you promptly and we have your reply, stating to *stand pat on our price* and that your representative goes there this evening. To all appearances you were not at this letting at Atlanta or I could not think that R. D. Wood & Co. would have been the lowest bidder, and yet it is quite a surprise to me that they rejected all bids received, and still they act magnanimous when they ask if it is not possible for a lower bid to be made from those so near their very door. I regret very much that you have not posted us on this matter, for you no doubt knew the condition of affairs, and I prefer receiving from you than from the Atlanta Water Works themselves.

Anniston had already telegraphed Chattanooga (Rec., p. 84):

Stand pat on your price. Our representative goes there this evening.

In answer to a communication from Bessemer, Anniston wrote it on February 24, 1896 (Rec., bottom p. 84):

Your letter of the 22d instant received, and we wired you this morning: “Atlanta job postponed until March 4; have written you fully.” In reply will say that we believe we made a mistake in trying to get \$24 for pipe and 2½ cents for specials, but



there would have been no difficulty in this respect had we not run up against R. D. Wood & Co.'s man there, putting in his bid for hydrants; and he also put in a bid for the pipe and specials at the last moment. Our representative called on the water company on Saturday, the 22d, and found Wood & Co.'s man on the—they stated it was their belief that the four Southern shops have an arrangement by which Anniston is to get the work. In other words, that we have a combination between us, and if they can find it out positively they will never receive a bid from any of us again. We think the best thing we can do is to have a representative from each of the four Southern shops on the ground on March 4, the date fixed for next letting, and dispose of the matter. In addition to asking for prices for the present lot of pipe they will ask for bids for the year's supply, consequently it is very important we all be on hand and take this matter up vigorously with them and see if we can not satisfy them on the subject of the combine.

(Signed)

———, V. P.

NOTE.—J. K. Dimmick is vice-president Anniston works.

McC.

The Anniston company's report from its agent at Atlanta is given in full at pages 85 to 86 of the record. Besides the Philadelphia man he met Mr. Torbett, secretary of the water board; Mr. Erwin, one of the water commissioners, and Colonel Woodward, superintendent of the waterworks. He told the city council that "the ruling market price would be about \$24," and got a favorable resolution through the council without a dissenting vote. (Rec., p. 85.) The Philadelphia man,

however, at the last moment put in a bid for \$23. The threat against the four Southern shops came from Mr. Erwin, and Colonel Woodward also advised the rejection of all bids. The Colonel's advice may have been on the ground that "he promised me when there last he would give us another chance in the event we were not the lowest bidders." In other words, he knew that the Anniston company could afford to furnish the pipe at a lower price than what they were asking as "the ruling market price." It is not surprising that the Colonel appears as an affiant on behalf of the Anniston company, maintaining that its prices were "fair, reasonable, and moderate" (Rec., pp. 166, 167), while perhaps it may be surprising that Mr. Erwin fell in line with him (p. 169). Negotiations were opened with the Philadelphia concern to prevent its appearance at the second bidding (p. 87).

On April 10 (Rec., p. 50) the contract was let to the Anniston Company at \$22.75 for the year's supply and \$22 for some "special shipments." Assuming the cost with a fair profit at Anniston to be substantially the same as at Chattanooga, and assuming the freight from Anniston to be \$1.60 per ton (p. 76), this made a price of about \$6.75 per ton over and above a fair and reasonable profit. This seems to be an underestimate, because we find the following entry in the minutes of the Associated Pipe Works of March 13, 1896 (Rec., p. 76):

Moved, that "bonus" on Anniston's Atlanta waterworks contract be fixed at \$7.10, provided freight is \$1.60 a ton. Carried.

Before payment was made by the Atlanta Water Works an investigation was had, based upon charges by the same man whose information led to the present suit. The charges were referred to a special committee, consisting of Messrs. Erwin, Torbett, and Hass, on May 18, 1896 (Rec., p. 168). The city's attorneys had advised that the city could recover in a suit against the Anniston works (Rec., p. 170). The committee, however, unanimously overruled the attorneys after telling the officers of the Anniston company (Rec., pp. 169-174).

In the course of the correspondence between members of the association relative to the action of the Atlanta authorities in rejecting all bids, the following letter was written on February 25, 1896, by Thomasson, of the Chattanooga works, to Anniston (Rec., pp. 86, 87):

CHATTANOOGA, TENN., *Feb'y 25, 1896.*

MR. J. K. DIMMICK, V. P., AND ALL CONCERNED.

GENTLEMEN: We are in receipt of a carbon copy of your favor of the 24th instant to F. B. Nichols, V. P., in reference to Atlanta, Ga. We certainly regret that the matter has assumed its present shape and that R. D. Wood & Company should make a lower bid by one dollar a ton than the Southern shops. You know we have always been opposed to special customers and "reserved cities," we do not think that it is the right principle, and we believe that if the present association continues, that all special customers and "reserved cities" should be wiped out; there is no good reason why we should be allowed to handle New Orleans, you Atlanta, Howard-Harrison Iron Co., St. Louis, or South Pittsburg, Omaha. We are not in the business to award special privileges to any foundry and we

believe that the result would be more benefit to all concerned if all business was made competitive. It is hardly right, and we believe if you will think over the matter carefully, you will concede it, for us to be put into a position of being unable to make prices or furnish pipe for the city of Atlanta, when we have always heretofore had a large share of their trade. *We can not explain our position to the Atlanta people and we consider it is detrimental to our business and think no combination should have the power to force us into such a position.* The same argument will apply with you as to New Orleans, St. Louis, and other places. We think this matter should be considered seriously and some action taken that will result in reestablishing ourselves (I mean the four Southern shops), in the confidence of the Atlanta people. Wistar, R. D. Wood & Company's man has no doubt told them all about our association, or as much as he could guess, and has worked up a very bitter feeling against us. The very fact that you have been protected and have had all their business for the past two years is proof to them that such a "combination" exists, and as they state that if they find out positively that we are working together, they will never receive a bid from any one of us again. We can not afford to leave these people under that impression, and something ought to be done that would disprove Mr. Wistar's statement to them. We believe that all business ought to be competitive. The fact that certain shops have certain cities "reserved" is all based upon mere sentiment and no good reason exists why it should be so. *We believe that as a general thing we have had our prices entirely too high and especially do we believe this has been the case as to prices in "reserved cities."* *The prices made at St. Louis and Atlanta are entirely out of all*

*reason, and the result has been and always will be, when high prices are named, to create a bad feeling and an agitation against the "combination." There is no reason why Atlanta, New Orleans, St. Louis, or Omaha should be made to pay higher prices for their pipe than other places near them, who do not use anything like the amount of pipe and whose trade is not as desirable for many other reasons. There is no sentiment existing with us in reference to Atlanta, as we would as soon sell our pipe anywhere else, only as stated above it is wrong in principle that we should be forced to give up Atlanta or any other point for no good reason that we know of.*

Very truly, yours,

CHATTANOOGA FDY. & PIPE WORKS,  
By E. B. THOMASSON.

For other facts shown in the record respecting the operation of the combination, its purpose and effect, I refer to extracts from Mr. Whitney's brief below, printed in the Appendix.

The following letter is of especial interest (Rec., p. 93):

CHATTANOOGA, TENN., Jan'y 2, 1896.

Mr. W. H. FLINT, Cincinnati, O.

DEAR SIR: Referring to our policy for 1896 in bidding on pipe, we have had this matter under consideration for some time past, and from the information obtained from Mr. Thornton's statement as to the amount of business done last year in pay territory and from estimates that we have made for business that will come into that territory for 1896, we have been unable to determine to what point we could bid on work and take contracts; and if bonus is forced above this point, let it go and take the

bonus. We note from your letter of yesterday that you have sized up the situation in its essential points, and it agrees exactly with our ideas on the subject. It is useless to argue that Howard-Harrison Iron Co., Cincinnati, and other shops, who have been bidding bonuses of *six or eight dollars per ton*, can come out and make any money if they continue to bid such bonus. In the case of the Howard-Harrison Iron Co. people, on Jacksonville, Florida. The truth of the business is they are losing money at the prices they bid for this work. *If they take the contract at \$19, delivered, it will only net \$16 at the shop after they have paid back the bonus of \$4.75; if they should continue to buy all the pipe that goes up to such figures as they have paid for Jacksonville and other points, they would wreck their shop in a few months.* However, they, of course, calculate this bonus will be returned to them on work taken by other shops. We are very much pleased with the bonus that has been paid, and we only hope they will keep it up, as it is only money in our pockets. As long as there is no money to us let them make the pipe, as we shall continue to do so.

For the present you will adopt the following basis:

On 16" and under standard weights, *\$14.25 at shop.*

On 18" and 36" standard weights, *\$13.*

On 16" and under light weights, *\$14.50 to \$14.75 at shop.*

That is, you will bid all over *\$13, \$14.25, and \$14.50 on work.* If we get work at these prices, it will be satisfactory. If the others run bonus above this point, let them take it, as it will be more money to us to take the bonus.

We note Mr. Thornton's report of average premiums from June 1 to Dec. that the average was



\$3.63. *The average bonuses that are prevailing to-day are 7 to 8 dollars.* We can not expect this to continue, and we think your estimate of \$6-ton average bonus is high, as we do not believe the premiums of '96 will average that price, unless there is a decided change for the better in business. We find there was sold and shipped into pay territory from Jan'y 1, 1895, to date, including the 40,000 tons of old business that did not pay a bonus, about 188,000 tons, and we think a very conservative estimate of shipments into this territory will amount to fully 200,000 this year, more than that *probably overrun 240,000 tons*, from the fact that the city of Chicago and several other places that annually use large quantities of pipe were not in the market last year or last season, from the fact that they were out of funds. On the basis as given you above if the demand should reach 220,000 tons, which would give us our entire 40,000 tons, provided we did no business, then the association would *pay us the average "bonus" which might be from \$3.50 to \$5 on our 40,000.* If we can not secure business in "pay territory" at paying prices, we think we will be able to dispose of our output in "free territory," and of course make some profit on that.

At the prices that Howard-Harrison people paid for Jacksonville, Des Plaines, and one or two other points, they are losing from \$2.50 to \$3 per ton; that is, provided "bonuses" would not be returned to them. Therefore when business goes at a loss we are willing that the other shops make it.

Just a few minutes ago we had a telegram from Nichols, at Jacksonville, stating that he could secure contract for water pipe at \$19 and \$19.19 for the sewer pipe, and wanted to know how much small pipe we would furnish. We replied at once we did

not want any of the business. He furthermore states that unless he takes contracts at these prices that the job will be advertised.

We await with some interest the outcome of this matter, as to whether Mr. Nichols will take the job or whether he will throw it off and let it come to a reletting.

Very truly, yours,

CHATTA. FDY. & PIPE W'KS.

By E. B. THOMASSON.

P. S.—Do not leave this letter on your desk where it might fall into the hands of others. Make a memorandum and tear the letter up. Above all things, make a confidant of no one in business matters.

#### ARGUMENT.

The act of July 2, 1890 (26 Stats., 209), entitled "An act to protect trade and commerce against unlawful restraints and monopolies," provides:

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

\* \* \* \* \*

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, etc.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the

United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition, setting forth the case, and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed as soon as may be to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

\* \* \* \* \*

SEC. 8. That the word "person" or "persons," wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

This statute has been before this court in the following cases:

*U. S. v. Knight Co.*, 156 U. S., 1;  
*U. S. v. Freight Association*, 166 U. S., 290;  
*U. S. v. Joint Traffic Association*, 171 U. S., 505;  
*U. S. v. Hopkins*, 171 U. S., 578;  
*Anderson v. U. S.*, 171 U. S., 604.

In the Knight Case there was involved a monopoly in the manufacture of sugar, commonly known as the sugar trust; in the Freight Association and Joint Traffic Association cases agreements among interstate railways to fix and maintain rates and fares, and in the Hopkins and Anderson cases two live stock exchanges located in Kansas City.

In the Knight Case the court held that the creation of a monopoly in production did not operate directly as a restraint upon interstate trade or commerce. In the Freight Association Case the court held that the anti-trust law applies to railroads, and that it prohibits *all* agreements in restraint of interstate trade and commerce, whether the restraint be reasonable or unreasonable. This was followed by the Joint Traffic decision, the court holding in addition that the antitrust law is valid and constitutional, and that Congress has the power to say that a contract or combination shall not be legal which restrains trade and commerce among the several States by shutting out the operation of the general law of competition. In the Hopkins Case it was held that the business of the members of the Kansas City Live Stock Exchange was not interstate commerce within the meaning of the antitrust law, and therefore the agreement creating that exchange did not operate to restrain trade or commerce among the several States. In the Anderson Case the court took the view that whether the members of the Traders' Live Stock Exchange, of Kansas City, were or were not engaged in interstate commerce, the agreement creating the exchange was not one in restraint of such trade.

The present case presents to the court for the first time a combination among competing shops, located in different States, which directly affects trade or commerce among the several States in the article they manufacture, namely, cast-iron pipe, mainly used by municipal corporations for gas, water, and sewer purposes. I contend:

First. The agreement is in restraint of trade, because it suppresses competition and arbitrarily fixes prices. It does this with respect to a commodity, cast-iron pipe, mainly used for public purposes and purchased by municipalities at public lettings after advertisements for bids; and it does this while fraudulently retaining a show of competition for the purpose of deceiving the public.

Second. The trade or commerce thus restrained is trade or commerce among the several States.

The agreement regulates such trade and directly affects it. It puts a restraint upon the trade among the several States in cast-iron pipe. The restraint is upon competition and directly affects interstate sales and the prices to be charged thereat.

# I.

In the able opinion by Judge Taft (Rec., pp. 293-327), there is a learned and elaborate review of the authorities respecting what constituted a contract in restraint of trade at common law (Rec., pp. 303-316). I shall not go over this ground. If the antitrust law applied only to contracts in unreasonable restraint of trade this agreement must fall, for it is unconscionable. No court ever sustained an agreement like this. It is not only a combination to throttle competition, but a conspiracy to defraud the people in the letting of public contracts.

The answer of the members of the combination says (Rec., p. 29) that it is true "that all contracts secured by them were, in the main, contracts to furnish pipe to gas, water, and municipal corporations, let to the lowest bidders after advertising for bids." It may be suggested

that contracts for pipe for gas, water, and sewer purposes are thus let because the law requires it, to prevent corruption among public officials and to secure the people the benefit of competition. The answer goes on to say :

Previous to December 28, 1894, or about that date, defendants had bid on such occasions against each other and other companies proposing to take such contracts, and *the competition provoked by this mode of dealing* secured to said gas, water, and municipal corporations the advantage of ruinous competition to the bidders, while said bidders had no other market in which to dispose of their product.

Such was the situation to be met, and such the evil to be remedied. The contracts being public in character, the law required open competition. To circumvent the law, the combination was formed. The answer goes on to say :

*To meet this situation*, defendants joined an association for their mutual protection in lessening expenses, securing better freight rates, etc.

The evil was competition; the remedy, according to the answer, an association "for lessening expenses, securing better freight rates, etc." The true purpose of the association is indicated by the abbreviation "etc." This means to prevent "ruinous competition." All such combinations are formed for that purpose.

Later in the answer (Rec., p. 32), in describing why the "auction pool plan" was adopted, this language is used :

From this manner in which gas, water, and municipal corporations procured their supply of pipe, a



few manufacturers could secure all the orders and drive the others out of business, and the inevitable result was not to promote competition, but to destroy the industry. They aver that it was *to guard against competition* which was unfair and ruinous, \* \* \* that the arrangement of May 27, 1895, was made.

Here is a frank expression. The object of the association from the first was to guard against and suppress the open competition which the law demanded in letting public contracts for cast-iron pipe for gas, water, and sewer purposes. This was the object and purpose of the combination. What was the plan? The original plan of December 28, 1894, provided for a fixed bonus on each contract in the pay territory.

The pay territory was the competitive territory, the territory in which these shops were the principal source of supply. It covered more than three-fourths of the United States, all west and south of New York, Pennsylvania, and Virginia. On every contract in this territory, the shop that secured it had to pay from \$1 to \$4 a ton to the association, for distribution among the shops according to their estimated tonnage capacity. The requirement of a bonus was to remove the motive for competition. The division of the bonus was a division of profits. The company that has to share its profits is not so eager to do the work. The pooling of freight and the division of earnings were prohibited by the anti-poolings provisions of the interstate-commerce act (sec. 5), because they are used to suppress competition and maintain arbitrary rates. The fixed bonus plan was, so far as it went, a provision for a division of profits. Its

object was to suppress competition and maintain arbitrary prices.

Along with the fixed bonus provision went the reserved cities plan. The leading cities in the territory were divided up among the shops.

The Cincinnati shop was to handle the business of Cincinnati, Covington, and Newport.

The Louisville shop, that of Louisville, Jefferson, and New Albany.

The Anniston shop of Alabama, that of Anniston and Atlanta.

The Chattanooga shop, that of Chattanooga and New Orleans.

The Bessemer shop of Alabama, that of Bessemer and Birmingham and St. Louis.

The South Pittsburg shop of Tennessee, that of Omaha, Nebr.

These cities, in every one of which the law required contracts for cast-iron pipe to be let after advertisement upon open competition, were parceled out among the members of the association. The shop that owned a city fixed the price. It notified the other shops of its price and they had to protect it by bidding over. This was a deliberate conspiracy to deceive and defraud. The city authorities supposed they were getting genuine bids. They supposed there was the competition which the law requires. They were deceived. There was no competition. The matter was all fixed up beforehand. The bids were collusive and fraudulent. The contract secured was illegal and void. And it was to do this sort of thing that the combination was formed.

But the fixed-bonus plan did not result "in the advancement in the prices of pipe anticipated," and so, on May 27, the auction-pool plan was adopted. Under this plan (R., p. 71) "all competition on the pipe lettings shall take place among the various pipe shops prior to the said letting." To accomplish this, all inquiries for pipe were to be referred to a board composed of one representative from each of the "six competitive shops." The board fixed the price for the pipe, and then the representatives bid against one another for the order, the shop offering the biggest bonus to get the job. The resolution provided that "the party securing the order shall have the protection of all the other shops." In other words, all the other shops were to bid over the price fixed by the board.

It is interesting to read what the defendants say about this arrangement. (R., p. 32.) They aver it was made "to guard against competition which was unfair and ruinous." As to the mode of operation, they say (Rec., p. 32):

On receiving notice that a contract for pipe was to be let, their representatives, who were experienced in defendants' line of business, and knew the cost of pipe, the state of supply and demand at the time, and what would under all circumstances be a fair and reasonable price on the contract offered,  
 \* \* \* *did jointly agree in advance on such a price.*

Here is an express admission that the combination was formed for the purpose of fixing the price of cast-iron

pipe arbitrarily, in advance of the public letting under the law. The answer continues (Rec., p. 32):

After said price was agreed on the question arose as to which of said defendants should have the preference as among themselves, in the bidding thereafter to occur in letting the contract. This was determined by the largest premium of those offered by each, to be charged as hereinbefore alleged. \* \* \* The price agreed on \* \* \* did not in fact fix or regulate the price at which contracts were obtained, but was only adopted as a fair price, and constituted a basis upon which the defendants could *intelligently compete* among themselves and determine who should endeavor to secure the order.

This was indeed "intelligent" competition; the intelligence of the gang that loots the public by deliberate prearrangement.

In discussing whether this combination is in restraint of trade, I have confined myself to the meaning and effect of the agreement itself.

Although the case is heard on bill and answer, thus making it necessary to assume the proof of the allegations in the answer, which are well pleaded, yet the legal effect of the agreement itself can not be altered by the answer, nor can its violation of law be made valid by allegations of good intention or of desire to simply maintain reasonable rates. \* \* \* In the view we have taken of the question the intent alleged by the Government is not necessary to be proved. The question is one of law in regard to the meaning and effect of the agreement itself, namely: Does the agreement restrain trade or commerce in any way so as to be a violation of the act? (*U. S. v. Freight Association*, 166 U. S., 290, 341.)

While I have purposely limited my own discussion to the agreement itself and its necessary operation and effect, the record is full of evidence as to what was actually done under this combination. I have for the convenience of the court printed in the statement extracts from the testimony in the record respecting the practical working of the agreement and its effect upon prices. In the appendix I print some extracts from Mr. Whitney's brief below. I close the discussion under this point by quoting what Judge Taft says as to the operation of the agreement (Rec., pp. 316-318):

The defendants, being manufacturers and vendors of cast-iron pipe, entered into a combination to raise the prices for pipe for all the States west and south of New York, Pennsylvania, and Virginia, constituting considerably more than three-quarters of the territory of the United States, and significantly called by the associates "pay" territory. Their joint annual output was 220,000 tons. The total capacity of all the other cast-iron pipe manufacturers in the "pay" territory was 170,500 tons. Of this, 45,000 tons was the capacity of mills in Texas, Colorado, and Oregon, so far removed from that part of the "pay" territory where the demand was considerable that necessary freight rates excluded them from the possibility of competing, and 12,000 tons was the possible annual capacity of a mill at St. Louis, which was practically under the same management as that of one of the defendant's mills. Of the remainder of the mills in "pay" territory and outside of the combination, one was at Columbus, Ohio, two in northern Ohio, and one in Michigan. Their aggregate possible annual capacity was about one-half the usual annual output of the defendant's mills. They

were, it will be observed, at the extreme northern end of the "pay" territory, while the defendant's mills at Cincinnati, Louisville, Chattanooga, and South Pittsburg, and Anniston and Bessemer were grouped much nearer to the center of the "pay" territory. The freight upon cast-iron pipe amounts to a considerable percentage of the price at which manufacturers can deliver it at any great distance from the place of manufacture. Within the margin of the freight per ton which Eastern manufacturers would have—pay to deliver pipe in "pay" territory, the defendants, by controlling two-thirds of the output in "pay" territory, were practically able to fix prices. The competition of the Ohio and Michigan mills, of course, somewhat affected their power in this respect in the northern part of the "pay" territory, but the farther south the place of delivery was to be, the more complete the monopoly over the trade which the defendants were able to exercise within the limit already described. Much evidence is adduced upon affidavit to prove that defendants had no power arbitrarily to fix prices and that they were always obliged to meet competition. To the extent that they could not impose prices on the public in excess of the cost price of pipe, with freight from the Atlantic seaboard added, this is true, but within that limit they could fix prices as they chose. The most cogent evidence that they had this power is the fact, everywhere apparent in the record, that they exercised it. The details of the way in which it was maintained are somewhat obscured by the manner in which the proof was adduced in the court below upon affidavits solely and without the clarifying effect of cross-examination, but quite enough appears to leave no doubt of the ultimate fact.

The defendants were by their combination therefore able to deprive the public in a large territory



of the advantages otherwise accruing to them from the proximity of defendants' pipe factories, and by keeping prices just low enough to prevent competition by Eastern manufacturers, to compel the public to pay an increase over what the price would have been if fixed by competition between defendants, nearly equal to the advantage in freight rates enjoyed by defendants over Eastern competitors. The defendants acquired this power by voluntarily agreeing to sell only at prices fixed by their committee, and by allowing the highest bidder at the secret "auction pool" to become the lowest bidder of them at the public letting. Now, the restraint thus imposed on themselves was only partial. It did not cover the United States. There was not a complete monopoly. It was tempered by the fear of competition, and it affected only a part of the price. But this certainly does not take the contract of association out of the annulling effect of the rule against monopolies. In *United States v. E. C. Knight Company* (156 U. S., 1, 16), Mr. Chief Justice Fuller, in speaking for the court, said: "Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

It has been earnestly pressed upon us that the prices at which the cast-iron pipe was sold in "pay" territory were reasonable. A great many affidavits of purchasers of pipe in "pay" territory, all drawn by the same hand or from the same model, are produced, in which the affiants say that in their opinion the prices at which pipe had been sold by defendants had been reasonable. We do not think the issue an important one, because, as already stated, we do not

think that at common law there is any question of reasonableness open to the courts with reference to such a contract. Its tendency was certainly to give defendants the power to charge unreasonable prices, had they chosen to do so. But, if it were important, we should unhesitatingly find that the prices charged in the instances which were in evidence were unreasonable. The letters from the manager of the Chattanooga Foundry, written to the other defendants and discussing the prices fixed by the association, do not leave the slightest doubt upon this point and outweigh the perfunctory affidavits produced by the defendants. The cost of producing pipe at Chattanooga, together with a reasonable profit, did not exceed \$15 a ton. It could have been delivered at Atlanta at \$17 to \$18 a ton, and yet the lowest price which that foundry was permitted by the rules of the association to bid was \$24.25. The same thing was true all through "pay" territory to a greater or less degree, and especially at "reserved" cities.

## II.

1. The trade or commerce restrained by the agreement or combination was trade or commerce among the several States. The agreement regulates such trade and directly affects it. The restraint is not an indirect result of the agreement. The manifest intention of the combination was to put a restraint upon trade among the several States in cast-iron pipe. The restraint was upon competition and directly affected interstate sales and the prices to be charged at interstate sales. The natural operation of the law of competition in interstate business among these six shops, located in four different States,

and operating in a pay territory composed of thirty-six States, was purposely and intentionally restrained and suppressed by this arrangement.

It is impossible to suggest a contingency in which the agreement would have a purely local operation. Even in the case of a local sale, as a sale by the Addyston Company of pipe to Cincinnati, there would be a restraint upon interstate trade because the agreement prohibits the other five shops, located outside of Ohio, from bidding on such contract, that is, from selling their pipe to Cincinnati. Such a sale by a shop outside of Ohio to Cincinnati would be interstate commerce; therefore the agreement puts a restraint upon such commerce. Moreover, in every instance there is an interference with the law of competition and an arbitrary regulation of the price to be charged. Let us revert to the arrangement.

The shops were located, two in Alabama, two in Tennessee, one in Kentucky, and one in Ohio. The pay territory, in which sales were regulated, included thirty-six States. The cities "reserved" were:

Atlanta and Anniston, Ala., to the Anniston, Ala., shop;

New Orleans and Chattanooga, to the Chattanooga shop;

St. Louis and Birmingham to the Bessemer, Ala., shop;

Omaha, to the South Pittsburg, Tenn., shop;

Louisville, New Albany, and Jeffersonville, to the Louisville shop; and

Cincinnati, Newport, and Covington, to the Cincinnati shop.

Under the auction-pool plan of May 27, 1895, all inquiries, except in reserved cities, were referred to the "representative board," which fixed the price, and then bid against one another for the job, the biggest bonus to get it. (Rec., p. 70.)

In the case of reserved cities, the successful bidder being already determined, the price and bonus was to be fixed at a regular or called meeting of the principals. (Rec., p. 72.)

Thus the agreement or combination restrained every defendant, except the one selected to take the contract, from bidding in good faith for or making it, and restrained the chosen shop from making the contract, except at the arbitrary price fixed by the combination. With respect to pipe to be shipped to any of the thirty-six States constituting "pay territory," except Alabama, Tennessee, Kentucky, and Ohio, the combination restrained five of the defendants from soliciting or making an interstate sale, and restrained the sixth one from soliciting or making an interstate sale below a fixed price.

With respect to sales in the four States in which the shops were located the combination restrained at least three, sometimes four, and sometimes five of the defendants from making or soliciting an interstate sale, and if the contract happened to be allotted to a shop outside of the State where the pipe was to be shipped the combination restrained the making of an interstate contract below a fixed price. It is clear, therefore, that no sale, or contract to sell, or proposal to sell, can be suggested within the scope of the agreement, with respect to which

the combination did not restrain at least three, often four, more often five, and usually all of the defendants from the free exercise of the right, which the antitrust law was intended to protect, of selling their products in States other than their own at whatever prices they might see fit.

2. Yet it is contended that this agreement and combination put no restraint upon interstate trade or commerce. What is interstate trade or commerce? It is trade or commerce among the several States. And what is that? Intercourse and traffic. The transmission of intelligence (96 U. S., 1, 9), the transit of persons, the purchase, sale, and exchange of commodities, the transportation of property.

Commerce, "undoubtedly, is traffic, but it is something more; it is intercourse." (Mr. C. J. Marshall, *Gibbons v. Ogden*, 9 Wheaton, 1, 189.)

In the *Knight Case* (156 U. S., 1), Mr. C. J. Fuller, defining the limits of the power vested in Congress to regulate commerce, says, page 13:

*Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the States, or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce.*

In the recent case of *Hopkins v. U. S.* (171 U. S., 578), this court speaking by Mr. Justice PECKHAM, said, page 597:

Definitions as to what constitutes interstate commerce are not easily given so that they shall clearly define the full meaning of the term. We know

from the cases decided in this court that it is a term of very large significance. It comprehends, as it is said, intercourse for the purposes of trade in any and all its forms, including transportation, purchase, sale and exchange of commodities between the citizens of different States, and the power to regulate it embraces all the instruments by which such commerce may be conducted (citing cases).

In the Knight Case, the monopoly related only to the production of sugar. The fact that goods which are manufactured may subsequently be sold and transported into another State does not make such goods the subject of interstate commerce until actually in transit. In the present case, however, it is not the cast-iron pipe which, according to our contention, is the part of interstate commerce regulated and restrained by the combination, but it is the contracts to sell such pipe among the several States. Such contracts constitute trade or commerce among the several States. The goods covered by interstate contracts do not become a part of interstate commerce until they are put in the way of transit; then they pass beyond the control of the State and under the control of the General Government, and they remain under such control until they become a part of the common mass of property in the State to which shipped.

I concede that under the rule laid down in *Coe v. Errol* (116 U. S., 517) and *Kidd v. Pearson* (128 U. S., 1) goods do not become the subject of interstate commerce and under the protection of the General Government until actually in course of transportation from one State to another. The intention to ship the goods to another State, as in *Coe v. Errol*, or the manufacture of goods

for export to another State, as in *Kidd v. Pearson*, does not prevent the State in the first case from taxing the goods, or in the second case from prohibiting their manufacture. But trade among the several States is the making of sales as well as the delivery of the goods. Primarily, to trade is to buy and sell; the delivery follows. The negotiations of sales, the making of contracts to sell, goods to be shipped from one State to another, is interstate commerce. Local laws placing a tax, a burden, or restraint upon such interstate commerce have repeatedly been declared invalid by this court.

In *Robbins v. Shelby Taxing District* (120 U. S., 489) this court held that a Tennessee law, requiring a drummer to pay a tax for the privilege of soliciting sales of goods for a Cincinnati firm was invalid, because it put a burden upon interstate commerce. Mr. Justice Bradley, speaking for the court, said, page 494:

In view of these fundamental principles, \* \* \* we may \* \* \* inquire whether it is competent for a State to levy a tax or impose any other restriction upon the citizens or inhabitants of other States, for selling or seeking to sell their goods in such State before they are introduced therein. Do not such restrictions affect the very foundation of interstate trade? How is a manufacturer, or a merchant, of one State, to sell his goods in another State, without, in some way, obtaining order therefor?

Again, page 497:

*The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce.*



The decision in Robbins's Case has been followed in *Corson v. Maryland* (120 U. S., 502); in *Asher v. Texas* (128 U. S., 129); in *Stoutenburg v. Hennick* (129 U. S., 141); and in *Brennan v. Titusville* (153 U. S., 289). In Corson's Case, a Maryland law was held invalid, under which a resident of New York was indicted for offering to sell goods for a New York firm in Baltimore without a license. In Asher's Case, a New Orleans drummer was imprisoned for soliciting orders in Texas without a license. In Stoutenburg's Case, the license tax on the foreign drummer was levied by the District of Columbia. Brennan's Case involved the validity of an ordinance of Titusville, Pa., under which a license tax was imposed for soliciting orders for picture frames and portraits to be made in Chicago and shipped to Titusville. Mr. Justice Brewer, speaking for the court, said, bottom page 297, 298 :

The question in this case is whether a manufacturer of goods, which are unquestionably legitimate subjects of commerce, who carries on his business of manufacturing in one State, can send an agent into another State to solicit orders for the products of his manufactory without paying to the latter State a tax for the privilege of thus trying to sell his goods. It is true, in the present case, the tax is imposed only for selling to persons other than manufacturers and licensed merchants; but if the State can tax for the privilege of selling to one class, it can for selling to another, or to all. In either case it is a *restriction on the right to sell*, and a burden on lawful commerce between the citizens of two States.

It is too often forgotten, to use the language of Mr. Justice Bradley in the Robbins Case (120 U. S., bottom 496):

That the people of this country are citizens of the United States, as well as of the individual States, and that they have some rights under the Constitution and laws of the former independent of the latter, and free from any interference or restraint from them.

The right to trade among the several States, without restriction or imposition, is guaranteed by the Constitution. This right includes, indeed is based primarily on, the right to sell goods for delivery from one State to another. The antitrust law was passed to preserve this freedom to persons and corporations and strike down all restraints put upon it by combinations or conspiracies. The right of persons and corporations to sell their goods in other States and to ship them there, freely and without restraint, is one in which not only the seller but the public is interested.

3. The combination which puts a restraint upon interstate sales violates the antitrust law just as much as one which puts a restraint upon interstate transportation. The sale precedes the transportation, but is as much interstate commerce. A combination designed to suppress all competition in the sale of goods among the several States, and arbitrarily to fix and maintain the price in all such sales, is as hostile to the public interests as a combination to suppress competition among interstate railways and fix rates and fares upon persons and property transported. It all amounts to the same thing in

the end. The court can take care of restraints and burdens upon interstate commerce by States and municipalities. Congress, by the antitrust law, sought to take care of restraints put there by persons and corporations, through combination and conspiracy. Congress intended to preserve the freedom of trade and commerce among the several States. Competition goes along with such freedom. If you suppress competition, you no longer have freedom, but restraint.

In the recent case of *United States v. Joint Traffic Association* (171 U. S., 505), Mr. Justice Peckham, speaking for the court, said, top page 577 :

The natural, direct, and immediate effect of competition is, however, to lower rates, and thereby to increase the demand for commodities, the supplying of which increases commerce, and an agreement, whose first and direct effect is to prevent this play of competition, restrains instead of promoting trade and commerce.

This language, *mutatis mutandis*, applies to the case before the court. The direct and immediate effect of competition among manufacturers of cast-iron pipe is to lower prices, and thereby increase the demand for such product. There is no lack of need in the cities for water, gas, and sewer pipe ; the lack is of money to purchase such pipe. The lower the price, the farther the money will go, and the more pipe will be purchased and shipped, to the increase of commerce among the several States.

4. It is objected that the agreement between the six shops did not amount to a transaction in interstate commerce, and therefore could not operate as a restraint upon

such commerce. At the most, it was simply an arrangement among manufacturers and sellers of cast-iron pipe. The purchasers of cast-iron pipe were not parties to the agreement. The agreement ended when the price for a contemplated contract was fixed and the successful bidder determined; but at this point there was no contract for the sale and delivery of pipe from one State to another, and at this point the operation of the agreement ended. Therefore, it is contended, the agreement does not directly affect interstate commerce.

The same argument would have applied in the Trans-Missouri and Joint Traffic cases. The agreements held invalid in those cases were agreements among the carriers alone. The shippers were not parties to the agreements. Each agreement between competing railroads engaged in interstate commerce created a central authority with power to establish and maintain rates and fares. The fixing of rates and fares is not in itself an act of interstate commerce. It simply amounts on the part of the railroad companies to an offer or proposition to transport persons or property at a certain rate. Interstate commerce, in the case of railways, does not begin until the passenger or shipper takes a hand. Then the contract for passage or transportation is made. The traffic agreements were held to be in restraint of trade because they prevented competition among the railroads and arbitrarily fixed the rates and fares to be charged shippers. They did not, however, make or assume to make contracts with shippers.

So, in the present case, while the agreement attacked is between the makers and sellers of cast-iron pipe, its

subject is interstate sales. The subject of the agreement between the railway corporations was contracts to transport goods among the several States; the subject of the agreement among these manufacturing corporations was contracts to sell goods among the several States. The restraint imposed in each case was upon interstate commerce, for a sale of goods in one State to be shipped to another is no less an act of interstate commerce than the transportation of the goods themselves.

5. It is urged that the agreement under examination was simply one to collect and divide a bonus among the members of the association. It had no other purpose or effect. But why divide a bonus? The bonus was not the end but the means of the combination. Like the division of earnings among competing railroads, the division of the bonus was intended to suppress competition among these shops in the pay or competitive territory. It was thought that the competition would be lessened, if not suppressed, by requiring the successful bidder to pay a fixed amount per ton into the common treasury for division among the members of the association. Thus the successful bidder would be compelled to share the profits, to a certain extent, with his natural competitors. This, of course, would lessen the motive for competition.

The fixed bonus system did not, except in the reserved cities, result in "the advancement in the prices of pipe, as was anticipated" (Rec., p. 70). Therefore the auction-pool plan was adopted. The statement in the resolution adopting the auction-pool plan that the fixed-bonus plan had not resulted in the advancement in prices anticipated is a clear and conclusive admission that the

fixed-bonus plan—in other words the association itself—was created to advance the price of pipe. The reason why the fixed-bonus plan did not advance the price of pipe in the way anticipated is plain. Under the fixed-bonus plan there was competition between the shops. Each sought to get the job, the only condition being that the fixed bonus, which ran from \$1 to \$4 a ton (Rec., p. 66), should be paid for division among the members. There was no provision for fixing in advance the price of the pipe to be sold under the fixed-bonus plan. The price was fixed by competition ; a bonus then had to be paid.

Now, the reserved-city plan had fulfilled all the expectations of the originators of the association. It had resulted in the advancement of prices, as anticipated. Why? Because under the reserved-city plan the price was fixed by the shop to which the city was allotted. It fixed its price knowing there would be no competition from the other members of the association. After fixing the price it notified the other members, and they were compelled to protect its price by bidding a higher amount. The advancement in the price of pipe was thus secured. But the result of this was to put the other shops "in a hole," as shown in Thomasson's letter respecting the Atlanta contract. (Rec., pp. 86, 87.) He frankly says in this letter:

We believe that as a general thing we have had our prices entirely too high, and especially do we believe this has been the case as to prices in reserved cities. *The prices made at St. Louis and Atlanta are entirely out of all reason,* and the result has been and

always will be, when high prices are named, to create a bad feeling and an agitation against the combination. There is no reason why Atlanta, New Orleans, St. Louis, or Omaha should be made to pay higher prices for their pipe than other places near them who do not use anything like the amount of pipe and whose trade is not as desirable for many other reasons.

In this connection, note the provision in the reserved city plan (Rec., p. 66) with respect to St. Louis, Mo., reserved for the Bessemer Company. After thus reserving St. Louis, this provision was made:

Extra bonus to be put on East St. Louis and Madison, Ill., so as to protect the prices named for St. Louis, Mo.

The reserved-city plan was all right as a means of advancing prices. The fixed-bonus plan, however, was dropped, being succeeded by the auction-pool plan. Under the auction-pool plan there could be no competition among the members of the association. Every inquiry for pipe except in the reserved cities was referred to the representative board, which fixed the price to be paid. Here was a perfect plan for advancing the price to whatever figure the combination thought the contract would stand. The representatives of the different shops then bid against one another for the job, the combination getting the benefit of the bonus. This was a vast improvement on the fixed-bonus plan. Its adoption resulted in December, 1895 (Rec., p. 72), in the modification of the reserved-city plan, so as to give the combination authority, through its board, to fix the price and bonus for each reserved city.



The fixing of the price and the determination of the bonus at a meeting of the representative board had the natural result of advancing the price of pipe and increasing the amount of the bonus paid to secure the work. Mr. Thomasson, in his letter of January 2, 1896, says (Rec., p. 94): "The average bonuses that are prevailing to-day are \$7 to \$8." The natural result of an arbitrary fixing of the price was an increase of the profit in the transaction, and hence a bigger bonus was bid. The advance in the price of pipe under the arbitrary method of the association explains the raising of the bonus. The members bid among themselves for the job, not to get the work, but for the money there was in it. Thomasson, in his letter of January 2, 1896 (Rec., p. 93), gives the figures at which it was profitable for him to make and sell pipe at the shop. Work which would net him less than the amounts he names, from \$13 to \$14.75, at the shop, he did not care to have. If the bonus bid cut the price down below that figure, he prefers his share of the bonus; let the others take the work.

In the case of *Anderson v. U. S.* (171 U. S., 604), involving the validity of the Traders' Live Stock Exchange, of Kansas City, Mr. Justice Peckham, speaking for the court, said, page 615:

It has already been stated in the Hopkins Case, above mentioned, that in order to come within the provisions of the statute the *direct effect* of an agreement or combination must be in restraint of that trade or commerce which is among the several States, or with foreign nations. Where the subject-matter of the agreement does not *directly* relate to and act upon and embrace interstate commerce, and

where the undisputed facts clearly show that the purpose of the agreement was *not to regulate, obstruct, or restrain that commerce*, but that it was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, *and not its purpose or object*.

After showing the character of the agreement creating the live-stock exchange, and its purpose and effect, the court continues, page 617:

The agreement now under discussion differs radically from those of *United States v. Jellico Mountain Coal and Coke Co.*, 46 Fed. Rep., 432; *United States v. Coal Dealers' Association of California*, 85 Fed. Rep., 252, and *United States v. Adalyston Pipe and Steel Co.*, 85 Fed. Rep., 271. The agreement in all of these cases provided for *fixing the prices* of the articles dealt in by the different companies, being in one case iron pipe for gas, water, sewer, and other purposes, and coal in the other two cases. If it were conceded that these cases were well decided, they differ so materially and radically in their nature and purpose from the case under consideration that they form no basis for its decision. This association *does not meddle with prices* and itself does no business. In refusing to recognize any yard trader who is not a member of the exchange, we see no purpose of thereby affecting or in any manner restraining interstate commerce, which, if affected

at all, can only be in a very indirect and remote manner. The rule has no direct tendency to *diminish or in any way impede or restrain interstate commerce* in the cattle dealt in by defendants. There is no tendency as a result of the rule, directly or indirectly, *to restrict the competition among defendants for the class of cattle dealt in by them.*

The court thus clearly and conclusively distinguishes the Hopkins and Anderson cases from the one under consideration. There was no meddling with prices in either of those cases, no restriction placed upon competition. In the case before the court the restraint is directly upon competition in interstate commerce, and was put there in order to advance and maintain prices.

Speaking further with regard to the agreement creating the exchange, the court says, page 618 :

The agreement relates to the action of the associates themselves, and it places in effect no tax upon any instrument or subject of commerce ; it exacts no license from parties engaged in the commercial pursuits, and prescribes no condition in accordance with which commerce in particular articles or between particular places is required to be conducted. (Citing cases.)

But the agreement before the court does all of these things. It places in effect a tax upon a subject of commerce, by requiring the payment of a bonus in the case of interstate sales and shipments ; it exacts a license from parties engaged in commercial pursuits, requiring them to pay a premium to a common fund for the privilege of selling their goods among the several States in the pay territory ; it prescribes conditions in accordance with

which commerce in cast-iron pipe between particular parties and particular places is required to be conducted. The combination was formed for the purpose of regulating and restricting contracts to sell and deliver pipe in the competitive territory. The competitive territory was selected and set apart. Purchasers in that territory, called the "pay territory," were discriminated against. The members of the association were left free to sell at whatever price they saw fit, and under no restrictions or limitations, in the free territory; but this was not true as to the pay territory.

I submit that a combination among great manufacturing corporations, located in different States, which divides up the territory of the United States, leaving a portion of it open to the law of competition, and suppresses competition in all the rest, permitting prices to be fixed by natural laws in certain States, and arbitrarily fixing the prices itself in other States, is condemned by the anti-trust law and ought to be declared illegal by this court.

JOHN K. RICHARDS,  
*Solicitor-General.*

APRIL 26, 1899.

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## APPENDIX.

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TRACTS FROM MR. WHITNEY'S BRIEF FOR THE GOVERNMENT IN THE CIRCUIT COURT OF APPEALS.

### 2. *Purposes of the agreement.*

he agreement of May 27, 1895, contains the following recital of its purpose (Rec., p. 70):

Whereas, the system now in operation in this association of having a "fixed bonus on the several States" not in its operation resulted in the *advancement in prices of pipe* as was anticipated, *except in "reserved areas,"* and some further action is imperatively necessary in order to accomplish *the ends for which the association was formed*: Therefore [etc.]."

Mr. Bowron, of the South Pittsburg company, says that the association was established "to maintain fair prices and a just distribution of work"—"to maintain fair prices and secure for each a fair proportion of the work in a certain territory, by restraining in a certain measure competition as among themselves only"—"to restrain competition as among defendants, and allow to each a profitable division of work according to its relative capacity, and thereby maintain fair prices to all" (p. 160-161).

Mr. C. W. Harrison, of the same company, says that it is "on the theory that destructive competition results in monopoly," and that it "was the purpose of this association to maintain fair prices and secure for each of its

members a fair proportion of the work in a certain territory by restraining in a reasonable measure competition as among themselves only" (pp. 178-9).

Mr. Callahan, of the Louisville company, says that it was "to maintain fair prices, to regulate credits, and to accomplish an equitable distribution of such orders as the six defendants could secure in competition with the other manufacturers of cast-iron pipe"—"by regulating to a certain extent the competition among the defendants only, to endeavor to maintain fair prices, and to secure to each of the defendants a fair proportion of the orders in a certain territory" (pp. 217-8).

In describing the auction system Mr. Callahan clearly states what "fair prices" mean as understood by such combinations: "These voluntary offers from defendants were each based upon such prices for the respective orders as these defendants considered would be fair and reasonable prices" (p. 218).

That fairness and reasonableness from the consumers' point of view was not at all taken into consideration is shown by the prices actually charged in "pay territory" as set forth in the record, and by a letter of Mr. Thomasson of the Chattanooga company (pp. 86-87):

We believe that, as a general thing, we have had our prices entirely too high, and especially do we believe this has been the case as to prices in "reserved cities." The prices made at St. Louis and Atlanta are entirely out of all reason, and the result has been and always will be, when high prices are named, to create a bad feeling and an agitation against the "combination." There is no reason why Atlanta, New Orleans, St. Louis, or Omaha should be made to pay higher prices for their pipe than any other places near them who do not use anything like the amount of pipe and whose trade is not as desirable for many other reasons.

The affidavits of defendants show how in some respects this combination works beneficially by distributing orders



in such a manner that a greater regularity of employment is obtained at the different shops. This is immaterial. Probably few unlawful combinations would fail to secure economy of service to some considerable extent. The element of evil does not fail to vitiate the agreement because it contains likewise an element of good. A most interesting letter of Mr. Thomasson (pp. 93-94) shows that the bonus system was not intended to work, and did not actually work, simply as a distributor of employment, leaving the price charged to the consumer merely the actual cost with a fair business profit. While some proportion of the bonus may represent economy in production, a part of it is shown to represent an extra profit divided up among the different companies. Mr. Thomasson points out how the Bessemer company is going too far in speculating on this extra profit, and how his own company is secretly taking advantage of this error of its associate (p. 94):

If they should continue to buy all the pipe that goes up to such figures as they have paid for Jacksonville and other points, they would wreck their shop in a few months. However, they of course calculate this bonus *will be returned to them on work taken by other shops*. We are very much pleased with the bonus that has been paid, and we only hope they will keep it up as it is only money in our pockets. \* \* \* We note Mr. Thornton's report of average premiums from June 1 to December that the average was \$3.63. The average bonuses that are prevailing to-day are \$7 to \$8. We can not expect this to continue. \* \* \* If we can not secure business in "pay territory" at paying prices, we think we will be able to dispose of our output in "free territory," and of course make some profit on that. At the prices that Howard Harrison people paid for Jacksonville, Des Plaines, and one or two other points, they are losing from \$2.50 to \$3 per ton; that is, provided "bonuses" would not be

returned to them. Therefore when business goes at a loss we are willing that the other shops make it. \* \* \*

P. S.—Do not leave this letter on your desk where it might fall into the hands of others. Make a memorandum and tear the letter up. Above all things make a confidant of no one in business matters.

### 3. *Practical construction and operation.*

The record gives some interesting information about the working of this agreement in different cities.

*Chicago.*—At a meeting of the associates on February 14, 1896, it was decided that an order of the Chicago Gas Company should be filled at \$22 and \$21.50 with a bonus of \$5 (p. 75), and (apparently on some other Chicago advertisement, pp. 75, 76):

“On motion of A. F. Callahan, it was agreed on the dates of the Chicago letting at least five of the shops should be represented and a majority of them should decide what bid should be made. The job to be regularly disposed of by the committee before the letting.”

The presence of five shops at the letting was in pursuance of the system of “protecting bids,” by slightly higher false bids on the part of the companies which had agreed with the combination not genuinely to compete for the order. This system has been consistently maintained by the associates. Its advantages for purposes of concealment are obvious.

*Louisville.*—The record of December 20, 1895, contains the following (p. 73):

“F. B. Nichols moved that Dennis Long & Company be *allowed* to close contract for the year of 1896 with the Louisville Water Company at the best price they can obtain for same, and after securing contract refer the same to the meeting of the principals to fix bonus.

“Seconded by A. F. Callahan. Carried.”

*St. Louis.*—Mr. Nichols, of the Bessemer Company, writes to the other companies, on January 24, 1896, as follows (p. 80):

"I prefer that if any of you find it necessary to put in a bid without going to St. Louis, please bid not less than \$27 for the pipe and 2½ cents per pound for the specials. I would also like to know as to which of you would find it convenient to have a representative at the letting. It will be necessary to have two outside bidders."

St. Louis was a "reserved city" belonging to the Bessemer Company (p. 66), and paying a bonus of \$2 per ton (p. 66). The amount shipped from April 1 to December 31, 1895, was 10,970 tons, giving a bonus of about \$22,000 to the combination (pp. 80, 81).

*Knoxville.*—The Knoxville Woolen Mills on April 25, 1896, wrote to Chattanooga and Bessemer for quotations of cast-iron pipe (p. 52). This contract seems to have been bid in by Chattanooga, which telegraphed the other companies on April 29: "We will advance price Knoxville Woolen Mills dollar and half; please protect" (p. 82), at the same time bidding \$22 per ton (p. 53). Bessemer accordingly, through Mr. Nichols, bid \$22.24 per ton on April 30, with the hypocritical comment, "Trusting that we will be favored with your order, we are, yours truly" (p. 54).

*Omaha.*—The working of the agreement is well shown by the bidding for Omaha on December 20, 1895 (p. 74):

"W. L. Davis moved to sell the 519 pieces of 20" pipe for Omaha, Neb., for \$23.40 delivered.

"Seconded by D. R. P. Dimmick. Carried.

"F. B. Nichols moved that Anniston participate in this bonus and the job be sold over the table.

"Seconded by W. L. Davis. Carried.

"Pursuant to the motion the 519 pieces of 20" pipe for Omaha was sold to Bessemer at a premium of \$8."

The water companies of Omaha belong to South Pittsburg (p. 66). The receiver of one of them called for

bids in April, 1896, under competitive circumstances which the company's agent evidently thought "will make him some trouble, especially if we try to obtain too high a price" (p. 101). In response to a call upon Chattanooga for "protection" Mr. Thomasson wrote as follows on April 28 (p. 102):

"Please advise us at once as to what figure we shall make on this work. Please do not ask us to make a price of two or three dollars per ton higher than yours, but give us a reasonable price to name."

The Pittsburg company responded (p. 102):

"We request that you please quote the American Water Works Company of Omaha price of \$24.80 per ton of 2,000 pounds F. O. B. Omaha."

Accordingly Chattanooga wrote the following candid letter to the Receiver at Omaha (p. 103):

"DEAR SIR: Replying to your favor of the 25th instant, we propose to furnish cast-iron pipe as per specifications for \$24.80 per ton two thousand pounds, and will furnish special castings from our regular patterns for two and one-fourth cents per pound, all delivered on board cars Omaha, Nebr. We are in a position to give you prompt shipment on this pipe *and trust this time we will be favored with your order.*

"Very truly, yours,

"CHATTA. FDY. & PIPE WORKS,

"By E. B. THOMASSON."

#### 4. *The effects upon the public.*

It is not essential to show deleterious effects upon the public, but the subject is an interesting one, and the gleams of light from this record are also interesting.

The defendants have repeated *ad nauseam* affidavits tending to show that there were other large works—larger perhaps than their own—in the United States. A tonnage statement, for instance, is given (by an interested

witness and annexed to an evasive affidavit) of factories through the country, including some very large ones in Pennsylvania and New Jersey (p. 223).

It also appears, however, that the rates of freight are very high. For instance, pipe which is worth from \$13 to \$14.75 at the shop in Chattanooga (p. 94) pays \$6 to Peabody, Mass., and \$5.55 to Lockhaven, Pa. (p. 88); \$5.60 to Clifton, N. Y. (p. 89), \$4.80 to Wytheville, Va., \$5.40 to Troy, N. Y., \$3.90 to Allegheny, Pa., and \$4.95 to Syracuse, N. Y. (pp. 89, 90). The effect of these high rates, together with the location of these factories on or near the west slope of the Appalachian Mountain range, gives to them (and to the few other western works) a practical monopoly of nearly all the "pay territory"—in other words, of everything but the Northern and the Middle States. To this general statement there must be, of course, an exception as to localities on the coast line and elsewhere within the "pay territory" that are within the reach of northeastern factories. The small importance of these exceptions, however, may be gathered from the affidavits submitted by defendants themselves. They have undertaken to show the actual origin of the pipe used in large portions of the "pay territory," and have only succeeded in identifying the great Pennsylvania and New Jersey factories with two small lots of unspecified amount (pp. 176, 224). They content themselves with such evasive statements as those of Mr. Callahan, at pages 216-219 of the record, specifying neither the size of the orders nor the portions of the "pay territory" where they are found.

It is clear that as to the bulk of the "pay territory"—that is, as to the bulk of the United States—their competition comes from but few rivals. In main it seems to be confined to the works at Cleveland, Columbus, and Newcomerstown, Ohio, and Detroit, Mich., whose capacity is 200, 100, 75, and 75 tons per day, respectively

(pp. 149, 150, 156, 163, 206). A concern is indeed mentioned as competing at St. Louis, but it is suspected to be identical with the Bessemer concern (p. 52), with which it is almost identical in name. The factories in Colorado and Oregon are small and seem to cut only a local figure. The same may be said of the Texas penitentiary.

Such information as is given us leads to the conclusion that the Ohio and Michigan concerns have the smaller end of the business, even in territory for which transportation rates permit them to compete. Mr. Hallett, a general contractor in Aurora, Ill., gives the precise figures for his purchases in 1895 and 1896. He purchased 514 tons from the combination, 25 tons from the Newcomerstown concern (J. B. Clow & Son), and 50 tons from jobbers (pp. 103-104). Mr. W. H. Garrett, of Batavia, Ill., gives the purchases of the waterworks department of Fairbanks, Morse & Co. for the same period. They included 1,023 tons from the combination, 690 tons from Columbus, 79 tons from Cleveland, and 35 tons from the Glamorgan Pipe and Foundry Company, of Lynchburg, Va. These purchases were "in the business of contracting waterworks for municipalities throughout the United States" (pp. 108-109).

We could judge more accurately of the strength of the Associated Pipe Works if we were definitely informed as to their capacity *per diem*. They have been so careful to produce testimony as to the *per diem* capacity of other companies (pp. 147-8, 149-50, 155-6, 163, 164-5, 205-6) that we may infer that there was good reason for their failing to be specific as to their own. The only specific testimony bearing on the point is that of Mr. Llewellyn as to his Chattanooga company. He gives its capacity at "about 40,000 tons of cast-iron pipe and special castings annually" (p. 201). This figure, however, is evidently taken from the minutes of the combination at page 73, which is shown by Mr. Thomasson of his own company not to represent the actual capacity of

the various works, but their usual output (p. 94). The 40,000 tons ascribed to Chattanooga represent its proportion of the 220,000, which are assumed, not as the full capacity of the works, but as their probable annual shipments into pay territory. The total of these shipments is estimated at 220,000 for the six companies, but Mr. Thomasson says :

"We think a very conservative estimate of shipments into this territory will amount to fully 200,000 tons this year; more than that—probably overrun 240,000 tons."

The same estimate which gives Chattanooga 40,000 tons gives South Pittsburg and Anniston 45,000 tons combined (p. 73); but the officers of these companies join with Mr. Llewellyn himself in verifying the answer (pp. 35, 36), which contains the following statement as to the "pay territory" (p. 30):

"They, however, deny that the shipments of pipe for 1896 amount to more than 100,000 tons in said territory, which they aver could have been supplied by any two of defendants so as to deprive all others of any share thereof."

In ascertaining the actual capacity we may therefore pretty safely double the estimate at page 73, and assume it to be 440,000 tons a year, or nearly 1,500 tons per day, as against the 450 tons per day of their four principal rivals.

As confirmatory of the position that no reliance is to be placed upon the statements of these defendants as to the relative working capacity of the different shops (except when their statements are not made for use in the present suit), we may compare the answer which they all join in verifying with the testimony of their own witnesses concerning the capacity of other works. Thus, the answer states the capacity of Scottdale as 200 tons instead of 100; of Columbus as 150 tons instead of 100; and of Detroit as 100 tons instead of 75 (pp. 36-37, 148, 156, 206).



Another example of the misleading character of this testimony is in the statement of Mr. Callahan at page 219 as to the actual clearance settlements amounting in 1895 to only 38 cents per ton, when compared with Mr. Thomasson's letter of January 2, 1896, showing that the average premiums from June 1 to December 31, 1895, were \$3.63 (p. 94).

Besides the partial monopoly which they were enabled to maintain through the high transportation rates and the limited output of their Western rivals, they doubtless resorted to special means for diverting rivalry, such as the negotiation for the withdrawal of the Philadelphia company from competition at Atlanta (p. 87), and the plan to prevent one Drummond "from invading our western territory" (p. 95).

*Reasonableness of prices.*—It will be borne in mind that, even under the common-law doctrine permitting reasonable restraints of trade, the burden of proof as to reasonableness is on the defendant.

We have in this record, however, affirmative evidence of the unreasonableness of the profits obtained by these corporations. Their unreasonableness is shown in various ways, such as by adding the price at the factory (p. 93) to the transportation rate (p. 76), and comparing this with the prices actually obtained, which usually range from about \$22 to \$25 per ton. It is also shown by the actual bonuses paid to the combination for the privilege of getting a contract, these bonuses running up to such figures as \$7.10 (p. 76), \$7.50 (p. 75), and \$8 (p. 74)—averaging from \$7 to \$8 in January, 1896 (p. 94). It is also shown by the large amounts of the aggregate bonuses which were divided up among these companies (pp. 98, 99). It is confirmed by the statement of the Chattanooga company itself that the prices were "entirely too high," especially in the "reserved cities;" that "the prices made at St. Louis and

Atlanta are entirely out of all reason, and that "there is no reason why Atlanta, New Orleans, St. Louis, or Omaha should be made to pay a higher price for their pipe than other places near them" (p. 87). No objection was made to this statement on the score of competency, nor can its competency be doubted. (*Wiborg v. United States*, 163 U. S., at pp. 657-658.)

By unduly and vastly raising the normal price of cast-iron pipe among communities which, by their geographical position, should have enjoyed special advantages, the combination has the indirect result of increasing competition in the northeastern or "free territory." This is shown by Thomasson's letter (pp. 93, 94), stating the policy of the Chattanooga company in view of the high bonuses paid by the Bessemer company for Southern contracts. He figures out an advantage to the Chattanooga company in refraining from bids and taking its share of the bonus without contributing to the fund, and adds:

"If we can not secure business in 'pay territory' at paying prices we think we will be able to dispose of our output in 'free territory,' and of course make some profit on that."

Thirteen dollars to \$14.75 per ton is stated in the same letter to be a profitable figure, and the Chattanooga company's propositions to northeastern cities after this letter (pp. 88-90) show how the theory is carried into practice by giving those cities an advantage of several dollars per ton in price over the naturally better situated cities immediately adjacent to the works of these defendants. Mr. Llewellyn, of Chattanooga, the chairman of the combination and one of its principal witnesses, was thus secretly inimical to its interests.

The letter announcing this scheme is dated January 2, 1896. We are furnished with the balance sheet showing payments and divisions of bonus for the ensuing four and

one-half months (pp. 98, 99). We find that Chattanooga during those months paid in \$2,016.25, and drew out \$15,077.99—truly a vindication of the wisdom, if not of the candidness, of this valuable witness.

Cast-iron pipe, if we may believe Mr. Harrison of South Pittsburg, "has no market value" (p. 177). "On account of the manner in which these contracts are let, the customer prevented the establishment of any market price" (pp. 178-179). We are, therefore, without any standard of reasonableness derivable from market quotations. The evidence, however, is overwhelming that in large portions of the country the price is half as much again what it ought to be.

There is, indeed, a large collection of affidavits stating that these prices are reasonable in the opinion of the affiants. Some of the affidavits are by interested parties, more or less discredited, as above shown. Most of the rest are by persons who have no real expert knowledge. It will be remembered that cast-iron pipe, on account of the peculiarities of its use, and on account of the high transportation rates, has no general market price throughout the country. Each local witness knows only that the combination gives him as low prices as anyone else, knowing nothing of the conditions governing the price as it would be if the combination should dissolve.

Moreover, the opinions are not accompanied by facts to back them, further than the single fact that the combination is able to underbid its competitors in certain localities. Such unsupported opinions have no weight under the rules governing expert evidence, as set forth in *The Conqueror*, 166 U. S., 110, 130-4, and *cas. cit.*



# ***In the Supreme Court of the United States.***

OCTOBER TERM, 1898.

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THE ADDYSTON PIPE AND STEEL COM- pany, Dennis Long & Co., Howard- Harrison Iron Company, Anniston Pipe and Foundry Company, South Pittsburg Pipe Works, and Chattanooga Foundry and Pipe Works, appellants, v. THE UNITED STATES.	}	No. 269.
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## **POINTS FOR THE UNITED STATES IN REPLY.**

### **I.**

It is urged that under the "auction pool" plan there was competition, because at the public letting there would be other bidders, whose prices would have to be met. It is not the contention of the Government that the combination absolutely prevented competition from outside shops. The competition it stifled was competition among its members. The "auction pool" plan absolutely prevented any competition among the parties

to the agreement. The central board, composed of representatives of the six shops, fixed in advance the price to be charged. We can readily understand that in fixing the price the board took into account possible competition from outside sources. The price was fixed to meet such competition if any was anticipated. The job was then sold over the table. The shop which bid the highest bonus for the benefit of the pool got the job. The successful shop took the job at the price fixed by the board. It expected to bid the fixed price and the other shops were required to overbid the fixed price in order to deceive the public.

## II.

But it is urged that the successful shop might have to bid under the fixed price in order to meet outside competition and secure the job. Concede this to be true in an exceptional case, where competition not anticipated by the board in fixing the price, had to be met. How does this affect the "auction pool" plan and relieve it of any obnoxious feature? The public would get the benefit of outside competition despite the combination, whose expectation and intention was to carry through the arbitrary price fixed in advance of the public letting. The bonus was based on the fixed price. The successful bidder agreed to pay the bonus upon the understanding that the job was to be secured at the fixed price. If unexpected competition from outside sources required a reduction in the fixed price to secure the job, then the bidder was entitled to a reduction of the bonus. An illustration of what took place when a reduction was required to secure

a job is to be found in the record, bottom page 76. In the minutes of the meeting of the combination at Chicago March 13, 1896, is the following:

The following motion was offered by W. L. Davis:  
 "It having been demonstrated that sales memos. Nos. 107 and 118 are the same enquiry, the committee's action on 118 is hereby cancelled and the bonus on 107 reduced to \$6.55 to equalize the reduction of one dollar per ton made by Bessemer to meet the price made by Shickle, Harrison & Howard Iron Co." Carried.

Evidently in this instance the bonus was treated as surplus profits. The required reduction of price to meet outside competition was followed by a similar reduction of the bonus or extra profits to be divided among the combination.

### III.

For the convenience of the court, I print here the table comparing prices fixed by the combination in the pay territory with prices fixed by competition in the free territory in the spring of 1896. This table, taken in connection with Mr. Thomasson's letter of January 2, 1896 (Rec., p. 93), shows conclusively that the combination was not formed for the purpose of fixing reasonable prices, and did not fix reasonable prices, but that the stifling of competition resulted in an unreasonable advance in prices. The object of the combination was to advance prices by suppressing competition. This object was attained under the "auction pool" plan, as the record clearly shows.



## PAY TERRITORY.

Atlanta, \$24. Bonus, \$7.10. (Page 76), February 17, 1896.

*Meeting, February 14, 1896 (Rec., p. 75).*

	Price fixed.	Bonus.	Net at place.
Chicago .....	\$22.00	\$5.00	\$17.00
Evanston .....	23.80	5.00	18.80
Calumet .....	23.50	5.00	18.50
Louisville .....	22.50	6.50	16.00
St. Louis (Laclede) .....	24.00	5.65	18.35
St. Louis (W. W.) .....	24.00	6.50	17.50
C. R. I. & P. R. R., year's supply .....	22.35	7.50	14.85

FREE TERRITORY (Rec., pp. 88, 89, 90).

*March 27 to April 29, 1896.*

	Prices bid.	Rate freight.	Net at shop.	At Atlan- ta or St. Louis.
Peabody, Mass .....	\$19.75	\$6.00	\$13.75	\$16.75
Lockhaven, Pa .....	19.00	5.55	13.45	16.45
Clifton Springs, N. Y .....	18.07	5.50	12.57	15.57
Wytheville, Va .....	18.30	4.80	13.50	16.50
Troy, N. Y .....	19.40	5.40	14.00	17.00
Pittsburg, Pa .....	17.25	3.90	13.25	16.25
Syracuse, N. Y .....	18.45	4.95	13.50	16.50
Malden, Mass .....	19.80	6.00	14.40	17.40

## IV.

It was contended in the argument that there is no regular market price for cast-iron pipe, and for this reason it was proper for these companies to suppress ruinous competition among themselves in bidding for public contracts. I do not concede there is no regular market price for cast-iron pipe. Cast-iron pipe required for sewer, gas, and water purposes is of certain fixed dimensions; it has a cost of production which varies according to the cost of the material and labor, as in the case of

other manufactured articles, and it has a price in the market, as the record shows. But if it were true that cast-iron pipe has no market price, this would be but another reason for insisting upon open competition among the shops which produce it. If there be no competition, how is it possible to determine what is and what is not a reasonable price? There is no market price, according to the other side, to gauge the arbitrary prices fixed by the combination.

## V.

Mr. Spurlock, in his argument, insisted that the words "a bonus" do not aptly describe the sum paid by the shop which got a contract in the pay territory into the pool for division among the members of the combination. He said it would be better to call this sum "a handicap." I am disposed to agree with him. Looked at from the point of view of the Government, the so-called bonus was a handicap. The public got no benefit from the bonus. The bonus was a handicap to the public. A handicap is a burden put on the competitor possessing superior advantages, in order to equalize the chances of all who enter into the competition. In other words, in order to prevent the public from getting the benefit of the superior advantages which the shop best situated to do the work possessed, the combination, under the fixed bonus plan, put a bonus or handicap on such competition. The shop which got the job had to pay so much a ton to the pool on the contract. The handicap thus placed on competition benefited the pool at the expense of the public.

I took occasion to explain to the court in my argument that the fixed bonus plan was not successful because it permitted competition among the various shops subject to the payment of the fixed bonus to the pool. Such competition prevented that advancement of prices which the combination was intended to secure.

Under the "auction-pool" plan, the amount of bonus did not in itself affect the public. The arbitrary determination of the price in advance was what affected the public. The amount of the bonus, afterwards determined by the sale of the job over the table, indicated the amount of profit there was in the job, the extent to which it was proposed to fleece the public, and the amount of extra profit there was which the successful bidder was willing to divide with the other members of the combination. This, however, was secondary. Under the "auction-pool" plan the injury to the public was occasioned primarily by fixing the price without competition. The subsequent proceedings were among the members of the combination and for the purpose of dividing the spoils.

## VI.

In the trans-Missouri and joint traffic cases it was argued that the railroad companies ought to be permitted to enter into agreements for the purpose of preventing ruinous competition because railroads are public agencies and are compelled to run their roads and accept passengers and freight for transportation. The court overruled that contention. Now it is insisted that so-called private

corporations ought to be permitted to enter into a combination to suppress competition in interstate business for the purpose of arbitrarily fixing prices, because they are not public agencies and can not be compelled to keep their shops running or sell their goods to any person who applies. The decisions in the trans-Missouri and joint traffic cases were not placed on the ground that the anti-trust law applies peculiarly to railway companies because they are public agencies. The strenuous fight made in the first case was that the anti-trust law was never intended to apply to railroads; that the trusts and combinations which Congress had in mind were trusts and combinations among individuals and private corporations, in other words, manufacturing and commercial trusts, and not transportation trusts. The court held that the antitrust law applies to railroads because the broad language of section 1 reaches "every contract, combination in the form of a trust, or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations." It matters not who are parties to the contract or combination; it matters not the degree of restraint; it is only necessary that the combination shall put a restraint upon trade or commerce among the several States or with foreign nations.

## VII.

It is said, however, that this conspiracy is safe behind the shield of liberty of contract. Having the right to contract, individuals and corporations may make what contracts they please, whatever be the restraints thereby imposed upon trade or commerce among the several

States. The liberty contended for is the liberty to destroy liberty. The liberty which the commerce clause of the Constitution was intended to secure and preserve is the liberty of every individual to make what contract he sees fit for the sale of his goods among the several States; to do this without any burden or restraint. He is to be free to trade among the several States upon what terms he sees fit. Mr. Warrington contends, however, that this liberty, secured by the commerce clause of the Constitution, is subject to a higher liberty, the liberty of certain individuals to combine and destroy the liberty of each to trade among the several States upon such terms as each thinks proper. This suggests the sacred right of self-government, contended for by Senator Douglas and described by Mr. Lincoln:

This sacred right of self-government amounts to this, that when two men agree to enslave another no third man shall interfere.

So with Mr. Warrington's sacred liberty of contract. It means that when six shops agree with one another to destroy their individual freedom of contract and of competition, and to put themselves in slavery to the pool, the Government can not interfere. Now, I submit that it never has been held, under the English common law, that liberty of contract includes the right to persons and corporations to combine and agree to destroy competition and arbitrarily fix prices. Agreements of that kind are against public policy. Mr. Warrington feels aggrieved because I have insisted too much upon "the personal equation" in this case. Well, the personal equation is what the Government is after. I do not believe in

arguing abstract questions. The question here is whether the agreement among these shops is one in restraint of trade. Mr. Warrington virtually concedes it is, and yet he says that its members have the right, because of their liberty of contract, to enter into such an agreement. The result, if not the purpose, of his contention is to confuse. Clearly the agreement under consideration was one in restraint of trade ~~in~~ commerce, one against public policy, and one which no liberty of contract would serve to uphold.

### VIII.

Section 8, Article I, of the Constitution defines the positive powers conferred upon Congress. The third of these powers is:

The Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes.

Mr. Warrington insists that this power was conferred upon Congress "to insure uniformity of regulation against conflicting and discriminating State legislation," and that therefore the only acts restraining trade or commerce among the several States which Congress may regulate and prevent are public and quasi public acts. In other words, Mr. Warrington says that Congress was given power to legislate on this subject in order to prevent the States from legislating, and, therefore, Congress has no power to legislate—it can only prevent the States from legislating. I concede that Congress was given the power to legislate upon the subject in order to insure uniformity of legislation and to do away with the

conflicting and discriminating State legislation. The power given to Congress was not, however, merely prohibitive. The makers of the Constitution did not intend to prohibit the States from regulating such commerce and then leave no power in Congress to regulate it. The power given Congress was not prohibitive, but positive. The mere fact that the Constitution has given Congress the power to regulate this commerce has led the Federal courts to hold attempts on the part of the States to regulate it null and void. It is not necessary for Congress to legislate in order to prevent restraints by States or municipalities. The courts are able to take care of such obstructions. The antitrust law was passed, however, under the positive power conferred on Congress to regulate commerce among the several States. To argue that Congress can not, under this positive power, prevent restraints or obstructions to trade or commerce among the several States by corporations and individuals is as much as to say that, under the same power, Congress may prevent States and municipalities from placing obstructions in navigable rivers of the United States, but has no power to prohibit or remove obstructions placed there by private persons or corporations. It is the duty of the General Government to keep such highways of commerce free from *all* obstructions, regardless of the source. So with respect to interstate trade, intrusted by the Constitution to the care of Congress. A restraint put upon trade among the several States by a combination of corporations injures the public as much as a restraint put there by States or municipalities. Such restraints appeal peculiarly to Congress. Interferences from States and



municipalities may be handled by the courts, such public acts being held void, but Congress, under the positive power given it to regulate commerce, must take care of interferences by corporations and individuals. To concede that a restraint put on interstate trade or commerce by a State is void, and to insist that Congress is helpless before a restraint placed on such trade by a combination of corporations, is to hold that the corporations are greater than the States. If the General Government has authority to prevent restraints by States it does not lack power to prevent such restraints by the creatures of the States.

If a State, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess? (*In re Debs*, 158 U. S., 564, 581.)

## IX.

Mr. Warrington seems to concede at one place in his reply brief that his liberty of contract argument would not apply to an agreement invalid in law. Yet such is the character of the agreement which he is trying to uphold. The agreement which formed the combination or conspiracy in this case is an agreement against public policy, invalid at common law, and expressly prohibited by the antitrust law. There can be no right or privilege under the Constitution to make an agreement of this character. After all, the legal question is whether the agreement did actually put a restraint upon trade or

commerce among the several States. In my brief and in my argument I think I sufficiently discussed that point. Mr. Warrington still insists that my contention was and is that the obnoxious agreement is in itself an act of interstate commerce. I never said so. I say that the agreement between the six shops puts a restraint on interstate commerce. It puts a restraint on interstate commerce in the same way that the agreements among the railroads in the trans-Missouri and joint traffic cases did. The railroad agreements provided a method of fixing the rates and fares in contracts for transportation among the States. This agreement provides a method for fixing the prices on contracts for sales among the States. Contracts to sell goods among the several States are as much interstate commerce as contracts to carry goods among the several States.

JOHN K. RICHARDS,  
*Solicitor-General.*



## Syllabus.

ADDYSTON PIPE AND STEEL COMPANY v.  
UNITED STATES.

APPEAL FROM THE COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 51. Argued April 26, 27, 1899. — Decided December 4, 1899.

Under the grant of power to Congress, contained in Section 8 of article I of the Constitution, "to regulate commerce with Foreign Nations and among the several States, and with Indian Tribes," that body may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract shall be, when carried out, to directly and not as a mere incident to other and innocent purposes, regulate to any extent interstate or foreign commerce.

The provision in the Constitution regarding the liberty of the citizen is to some extent limited by this commerce clause; and the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally and collaterally, regulate, to a greater or less degree, commerce among the States.

Interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities.

The power to regulate interstate commerce, and to prescribe the rules by which it shall be governed, is vested in Congress, and when that body has enacted a statute such as the act of July 2, 1890, c. 647, entitled "an act to protect trade and commerce against unlawful restraints and monopolies," any agreement or combination which directly operates, not alone upon the manufacture, but upon the sale, transportation and delivery of an article of interstate commerce, by preventing or restricting its sale, thereby regulates interstate commerce to that extent, and thus trenches upon the power of the national legislature, and violates the statute.

The contracts considered in this case, set forth in the statement of facts and in the opinion of the court, relate to the sale and transportation to other States of specific articles, not incidentally or collaterally, but as a direct and immediate result of the combination entered into by the defendants; and they restrain the manufacturing, purchase, sale or exchange of the manufactured articles among the several States, and enhance their value, and thus come within the provisions of the "act to protect trade and commerce against unlawful restraints and monopolies."

## Statement of the Case.

When the direct, immediate and intended effect of a contract or combination among dealers in a commodity is the enhancement of its price, it amounts to a restraint of trade in the commodity, even though contracts to buy it at the enhanced price are being made.

The judgment of the court below, which perpetually enjoined the defendants in the court below from maintaining the combination in cast-iron pipe as described in the petition, and from doing any business under such combination, is too broad, as it applies equally to commerce which is wholly within a State as well as to that which is interstate or international only.

Although the jurisdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce: nor does it acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State, by reason of the fact that the combination also covers and regulates commerce which is interstate.

THIS proceeding was commenced in behalf of the United States, under the so-called anti-trust act of Congress, of July 2, 1890, c. 647, 26 Stat. 209. It was undertaken for the purpose of obtaining an injunction perpetually enjoining the six corporations, who were made defendants, and who were engaged in the manufacture, sale and transportation of iron pipe at their respective places of business in the States of their residence, from further acting under or carrying on the combination alleged in the petition to have been entered into between them, and which was stated to be an illegal and unlawful one, under the act above mentioned, because it was in restraint of trade and commerce among the States, etc.

The trial court dismissed the petition, 78 Fed. Rep. 712, but upon appeal to the Circuit Court of Appeals the judgment of the court below was reversed with instructions to enter a decree for the United States perpetually enjoining defendants from maintaining the combination in cast-iron pipe as described in the petition, and from doing any business under such combination. 54 U. S. App. 723. The six defendants are The Addyston Pipe and Steel Company of Cincinnati, Ohio; Dennis Long & Company, of Louisville, Kentucky; The Howard-Harrison Iron Company, of Bessemer, Alabama; The Anniston Pipe and Foundry Company, of Anniston, Ala-

## Statement of the Case.

bama; The South Pittsburg Pipe Works, of South Pittsburg, Tennessee, and The Chattanooga Foundry and Pipe Works, of Chattanooga, Tennessee; one company being in the State of Ohio, one in Kentucky, two in Alabama and two in Tennessee.

The following are in substance the facts upon which the judgment of the Circuit Court of Appeals rested, as stated in the record:

It was charged in the petition that on the 28th of December, 1894, the defendants entered into a combination and conspiracy among themselves, by which they agreed that there should be no competition between them in any of the States or Territories mentioned in the agreement, (comprising some thirty-six in all,) in regard to the manufacture and sale of cast-iron pipe, and that in obedience to such agreement and combination, and to carry out the same, the defendants had since that time operated their shops and had been selling and shipping the pipe manufactured by them into other States and Territories, under contracts for the manufacture and sale of such pipe with citizens of such other States and Territories. There was to be a "bonus" charged against the manufacture of the pipe, to the extent set forth in the agreements and to be paid as therein stated. The whole agreement was charged to have been entered into in order to enhance the price for the iron pipe dealt in by the defendants.

The petition prayed that all pipe sold and transported from one State to another, under the combination and conspiracy described therein, be forfeited to the petitioner and be seized and confiscated in the manner provided by law, and that a decree be entered dissolving the unlawful conspiracy of defendants and perpetually enjoining them from operating under the same and from selling said cast-iron pipe in accordance therewith to be transported from one State into another.

The defendants filed a joint and separate demurrer to the petition in so far as it prayed for the confiscation of goods in transit, on the ground that such proceedings under the anti-trust act are not to be had in a court of equity, but in a court of law. In addition to the demurrer, the defendants filed a joint and separate answer, in which they admitted the exist-

## Statement of the Case.

ence of an association between them for the purpose of avoiding the great losses they would otherwise sustain, due to ruinous competition between defendants, but denied that their association was in restraint of trade, state or interstate, or that it was organized to create a monopoly, and denied that it was a violation of the anti-trust act of Congress.

Testimony in the form of affidavits was submitted by petitioner and defendants, and by stipulation it was agreed that the final hearing might be had thereon.

From the minutes of the association, a copy of which was put in evidence by the petitioner, it appeared that prior to December 28, 1894, the Anniston Company, the Howard-Harrison Company, the Chattanooga Company and the South Pittsburg Company had been associated as the Southern Associated Pipe Works. Upon that date the Addyston Company and Dennis Long & Co. were admitted to membership, and the following plan was then adopted :

"First. The bonuses on the first 90,000 tons of pipe secured in any territory, 16" and smaller, shall be divided equally among six shops.

"Second. The bonuses on the next 75,000 tons, 30" and smaller, sizes to be divided among five shops, South Pittsburg not participating.

"Third. The bonuses of the next 40,000 tons, 36" and smaller, sizes to be divided among four shops, Anniston and South Pittsburg not participating.

"Fourth. The bonus on the next 15,000 tons, consisting of all sizes of pipe, shall be divided among three shops, Chattanooga, South Pittsburg and Anniston not participating.

"The above division is based on the following tonnage of capacity :

South Pittsburg.....	15,000 tons.
Anniston .....	30,000 tons.
Chattanooga .....	40,000 tons.
Bessemer .....	45,000 tons.
Louisville.....	45,000 tons.
Cincinnati.....	45,000 tons.



## Statement of the Case.

"When the 220,000 tons have been made and shipped and the bonuses divided as hereafter provided, the auditor shall set aside into a reserve fund all bonuses arising from the excess of shipments over 220,000 tons, and shall divide the same at the end of the year among the respective companies according to the percentage of the excess of tonnage they may have shipped (of the sizes made by them) either in pay or free territory. It is also the intention of this proposition that the bonuses on all pipe larger than 36 inches in diameter shall be divided equally between the Addyston Pipe and Steel Company, Dennis Long & Co. and the Howard-Harrison Company.

"It was thereupon resolved:

"First. That this agreement shall last for two years from the date of the signing of same, until December 31, 1896.

"Second. On any question coming before the association requiring a vote, it shall take five affirmative votes thereon to carry said question, each member of this association being entitled to but one vote.

"Third. The Addyston Pipe and Steel Company shall handle the business of the gas and water companies of Cincinnati, Ohio, Covington and Newport, Ky., and pay the bonus hereafter mentioned, and the balance of the parties to this agreement shall bid on such work such reasonable prices as they shall dictate.

"Fourth. Dennis Long & Company, of Louisville, Ky., shall handle Louisville, Ky., Jeffersonville, Ind., and New Albany, Ind., furnishing all the pipe for gas and water works in above-named cities.

"Fifth. The Anniston Pipe and Foundry Company shall handle Anniston, Ala., and Atlanta, Ga., furnishing all pipe for gas and water companies in above-named cities.

"Sixth. The Chattanooga Foundry and Pipe Works shall handle Chattanooga, Tenn., and New Orleans, La., furnishing all gas and water pipe in above-named cities.

"Seventh. The Howard-Harrison Iron Company shall handle Bessemer and Birmingham, Ala., and St. Louis, Mo., furnishing all pipe for gas and water companies in the

## Statement of the Case.

above-named cities; extra bonus to be put on East St. Louis and Madison, Ill., so as to protect the prices named for St. Louis, Mo.

"Eighth. South Pittsburg Pipe Works shall handle Omaha, Neb., on all sizes required by that city during the year of 1895, conferring with the other companies and coöperating with them; thereafter they shall handle the gas and water companies of Omaha, Neb., on such sizes as they make.

"NOTE. — It is understood that all the shops who are members of this association shall handle the business of the gas and water companies of the cities set apart for them, including all sizes of pipe made by them.

"The following bonuses were adopted for the different States as named below: All railroad or culvert pipe or pipe for any drainage or sewerage purposes on 12" and larger sizes shipped into bonus territory shall pay a bonus of \$1.00 per ton. On all sizes below 12" and shipped into 'bonus territory' for the purposes above named, there shall be a bonus of \$2.00 per ton.

*List of Bonuses.*

Alabama.....\$3 00	S. D.....\$2 00	Ky.....\$2 00
B'gham, Ala.... 2 00	Florida..... 1 00	La..... 3 00
Anniston, Ala... 2 00	Georgia..... 2 00	Miss..... 4 00
Mobile, Ala..... 1 00	Atlanta, Ga.... 2 00	Mo..... 2 00
Arizona Ter.... 3 00	Ga. coast p'ts... 1 00	Montana..... 3 00
California..... 1 00	Idaho..... 2 00	Nebraska.. 3 00
Colorado..... 2 00	Nev..... 3 00	N. Mex..... 3 00
Ind. Ter..... 3 00	Oklahoma..... 3 00	S. C..... 1 00
North C..... 1 00	Wis..... 2 00	Minn..... 2 00
Tenn., east of		
C'land..... 2 00	Texas, interior.. 3 00	
Tenn., middle and		
west..... 3 00	Texas coast.... 1 00	
Illinois, except Madison and East St. Louis, as previously provided... 2 00		
Wyoming..... 4 00	Wash'ton Ter... 1 00	Utah..... 4 00
Oregon..... 1 00	Michigan..... 1 50	Indiana..... 2 00
Ohio..... 1 50	West Va..... 1 00	Iowa..... 2 00
N. D..... 2 00	Kansas..... 2 00	

All other territory free.

"On motion of Mr. Llewellyn, the bonuses on all city work as specially reserved shall be \$2.00 per ton."

## Statement of the Case.

The States for sale in which bonuses had to be paid into the association were called "pay" territory as distinguished from "free" territory in which defendants were at liberty to make sales without restriction and without paying any bonus.

The by-laws provided for an auditor of the association, whose duty it was to keep account of the business done by each shop both in pay and free territory. On the 1st and 16th of each month he was required to send to each shop "a statement of all shipments reported in the previous half month, with a balance sheet showing the total amount of the premiums on shipments, the division of the same and debt credit balance of each company."

The system of bonuses as a means of restricting competition and maintaining prices was not successful. A change was therefore made by which prices were to be fixed for each contract by the association, and except in reserved cities, the bidder was determined by competitive bidding of the members, the one agreeing to give the highest bonus for division among the others getting the contract. The plan was embodied in a resolution passed May 27, 1895, in the words following:

"Whereas, the system now in operation in this association of having a fixed bonus on the several States has not in its operation resulted *in the advancement in the prices of pipe as was anticipated, except in reserved cities*, and some further action is imperatively necessary in order to accomplish the ends for which this association was formed: Therefore, be it resolved, that from and after the first day of June, that all competition on the pipe lettings shall take place among the various pipe shops prior to the said letting. To accomplish this purpose it is proposed that the six competitive shops have a representative board located at some central city to whom all inquiries for pipe shall be referred, and said board shall fix the price at which said pipe shall be sold, and bids taken from the respective shops for the privilege of handling the order, and the party securing the order shall have the protection of all the other shops."

In pursuance of the new plan it was further agreed "that all parties to this association having quotations out shall

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notify their customers that the same will be withdrawn by June 1, 1895, if not previously accepted, and upon all business accepted on and after June 1st bonuses shall be fixed by the committee."

At the meeting of December 19, 1895, it was moved and carried that upon all inquiries for prices from "reserved cities" for pipe required during the year of 1896, prices and bonuses should be fixed at a regular or called meeting of the principals.

At the meeting of December 20, 1895, the plan for division of bonuses originally adopted was modified by making the basis the total amounts shipped into "pay" territory rather than the totals shipped into "pay" and "free" territory.

To illustrate the mode of doing business the following excerpt from the minutes of the meetings of December 20, 1895, February 14, 1896, and March 13, 1896, is given:

"It was moved to sell the 519 pieces of 20" pipe from Omaha, Neb., for \$23.40, delivered. Carried. It was moved that Anniston participate in the bonus and the job be sold over the table. Carried. Pursuant to the motion, the 519 pieces of 20" pipe for Omaha was sold to Bessemer at a premium of \$8.

"Moved that 'bonus' on Anniston's Atlanta water works contract be fixed at \$7.10, provided freight is \$1.60 a ton. Carried."

An illustration of the manner in which "reserved" cities were dealt with may be seen in the case of a public letting at St. Louis. On February 4, 1896, the water department of that city let bids for 2800 tons of pipe. St. Louis was "reserved" to the Howard-Harrison Company of Bessemer, Alabama. The price was fixed by the association at \$24 a ton, and the bonus at \$6.50. Before the letting the vice president of this company wrote to the other members of the association under date of January 24, 1896, as follows:

"I write to say that in view of the fact that I do not as yet know what the drayage will be on this pipe, I prefer that if any of you find it necessary to put in a bid without going to St. Louis, please bid not less than \$27 for the pipe, and 2½

## Statement of the Case.

cents per pound for the specials. I would also like to know as to which of you would find it convenient to have a representative at the letting. It will be necessary to have two outside bidders."

The contract was let to the Howard-Harrison Company of Bessemer, at \$24, who allowed the Shickle, Harrison and Howard Company, a pipe company of St. Louis, not in the association, but having the same president as the Howard-Harrison Company of Bessemer, to fill part of the order. The only other bidders were the Addyston Pipe and Steel Company, and Dennis Long & Co., the former bidding \$24.37 and the latter \$24.57. The evidence shows that the Chattanooga foundry could have furnished this pipe, delivered in St. Louis, at from \$17 to \$18, and could have made a profit on it at that price. The record is full of instances of a similar kind, in which, after the successful bidder had been fixed by the "auction pool," or had been fixed by the arrangement as to "reserve" cities, the other defendants put in bids at the public letting as high as the selected bidder requested, in order to give the appearance of active competition between defendants.

In January, 1896, after the auction pool had been in operation for more than six months, the Chattanooga Company wrote a letter to its representative in the central committee. The letter is dated January 2, 1896, and is as follows:

"DEAR SIR: Referring to our policy for 1896, in bidding on pipe, we have had this matter under consideration for some time past, and from the information obtained from Mr. Thornton's statement as to the amount of business done last year in pay territory and from estimates that we have made for business, that will come into that territory for 1896, we have been able to determine to what point we could bid on work and take contracts, and if bonus is forced above this point, let it go and take the bonus. We note from your letter of yesterday that you have sized up the situation in its essential points, and it agrees exactly with our ideas on the subject. It is useless to argue that Howard-Harrison Iron Co.,

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Cincinnati, and other shops, who have been bidding bonuses of \$6 or \$8 per ton, can come out and make any money if they continue to bid such bonus. In the case of the Howard-Harrison Iron Co., people on Jacksonville, Fla. The truth of the business is they are losing money at the prices they bid for this work. If they take the contract at \$19 delivered, it will only net \$16 at the shop after they have paid back the bonus of \$4.75; if they should continue to buy all the pipe that goes up to such figures as they have paid for Jacksonville and other points, they would wreck their shop in a few months. However, they of course calculate this bonus will be returned to them on work taken by other shops. We are very much pleased with the bonus that has been paid and we only hope they will keep it up as it is only money in our pockets. As long as there is no money to us let them make the pipe, as we shall continue to do so.

"For the present you will adopt the following basis:

"On 16" and under standard weights, \$14.25 at shop.

"On 18" and 36" standard weights, \$13.

"On 16" and under light weights, \$14.50 to \$14.75 at shop.

"That is, you will bid all over \$13, \$14.25 and \$14.50 on work. If we get work at these prices it will be satisfactory. If the others run bonus above this point let them take it, as it will be more money to us to take the bonus.

"We note Mr. Thornton's report of average premiums from June 1st to December, that the average was \$3.63. The average bonuses that are prevailing to-day are \$7 to \$8. We cannot expect this to continue, and we think your estimate of \$6 ton average bonus is high — as we do not believe the premiums of '96 will average that price, unless there is a decided change for the better in business. We find there were sold and shipped into pay territory from January 1, 1895, to date, including the 40,000 tons of old business that did not pay a bonus, about 188,000 tons, and we think a very conservative estimate of shipments into this territory will amount to fully 200,000 this year; more than that, probably overrun 240,000 tons, from the fact that the city of Chicago and several other places that annually use large quantities of pipe were not in the market

## Statement of the Case.

last year, or last season, from the fact that they were out of funds. On the basis as given you above, if the demand should reach 220,000 tons, which would give us our entire 40,000 tons, provided we did no business, then the association would pay us the average 'bonus,' which might be from \$3.50 to \$5 on our 40,000. If we cannot secure business in 'pay territory' at paying prices, we think we will be able to dispose of our output in 'free territory,' and of course make some profit on that.

"At the prices that Howard-Harrison people paid for Jacksonville, Des Plaines and one or two other points, they are losing from \$2.50 to \$3 per ton, that is, provided 'bonuses' would not be returned to them. Therefore when business goes at a loss, we are willing that other shops make it."

Another letter was written by the same company pending a trouble over a letting at Atlanta. The Anniston Company to whom Atlanta had been "reserved" made its bid so high (\$24) that a Philadelphia pipe firm, R. D. Wood & Co., had been able to underbid the Anniston Company in spite of difference in freights. All the bids had been rejected as too high, and upon a second letting Anniston's bid was \$1.25 a ton less, and the job was awarded to it. The charge was then made by Atlanta persons that there was a "trust" or "combine." This was vigorously denied. The letter of the Chattanooga Company evoked by this difficulty was dated February 25, 1896, and reads as follows:

"GENTLEMEN: We are in receipt of a carbon copy of your favor of the 24th instant to F. B. Nichols, V. P., in reference to Atlanta, Ga. We certainly regret that the matter has assumed its present shape, and that R. D. Wood & Company should make a lower bid by one dollar a ton than the southern shops. You know we have always been opposed to special customers and 'reserved cities,' we do not think that it is the right principle and we believe if the present association continues, that all special customers and 'reserved cities' should be wiped out; there is no good reason why we should be allowed to handle New Orleans, you Atlanta, Howard-Har-



## Statement of the Case.

rison Iron Co., St. Louis, or South Pittsburg, Omaha. We are not in the business to award special privileges to any foundry, and we believe that the result would be more benefit to all concerned if all business was made competitive. It is hardly right, and we believe if you will think over the matter carefully you will concede it, for us to be put into a position of being unable to make prices or furnish pipe for the city of Atlanta, when we have always heretofore had a large share of their trade. We cannot explain our position to the Atlanta people and we consider it is detrimental to our business, and think no combination should have the power to force us into such a position. The same argument will apply with you as to New Orleans, St. Louis and other places. We think this matter should be considered seriously and some action taken that will result in reestablishing ourselves (I mean the four southern shops) in the confidence of the Atlanta people. Wistar, R. D. Wood & Company's man, has no doubt told them all about our association, or as much as he could guess, and has worked up a very bitter feeling against us. The very fact that you have been protected and have had all their business for the past two years is proof to them that such a 'combination' exists, and they state that if they find out positively that we are working together, they will never receive a bid from any one of us again. We cannot afford to leave these people under that impression, and something ought to be done that would disprove Mr. Wistar's statement to them. We believe that all business ought to be competitive. The fact that certain shops have certain cities 'reserved' is all based upon mere sentiment, and no good reason exists why it should be so. We believe that, as a general thing, we have had our prices entirely too high, and especially do we believe this has been the case as to prices in 'reserved cities.' The prices made at St. Louis and Atlanta are entirely out of all reason, and the result has been and always will be, when high prices are named, to create a bad feeling and an agitation against the 'combination.' There is no reason why Atlanta, New Orleans, St. Louis or Omaha should be made to pay higher prices for their pipe than other places near

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them, who do not use anything like the amount of pipe and whose trade is not as desirable for many other reasons. There is no sentiment existing with us in reference to Atlanta, as we would as soon sell our pipe anywhere else, only as stated above, it is wrong in principle that we should be forced to give up Atlanta or any other point for no good reason that we know of."

It appears quite clearly from the prices at which the Chattanooga and the South Pittsburg Companies offered pipe in "free" territory that any price which would net them from \$13 to \$15 a ton at their foundries would give them a profit. Pipe was freely offered by the defendants in "free" territory more than five hundred miles from their foundries at less prices than their representative boards fixed prices for jobs let in cities in "pay" territory nearer to defendants' foundries by three hundred miles or more.

The defendants adduced many affidavits of a formal type, chiefly from persons who had been buying pipe from defendants and other companies, who testified in a general way that the prices at which the pipe had been offered by defendants all over the country had been reasonable, but in not one of the affidavits was any attempt made to give figures as to cost of production and freight, and in not a single case were the specific instances shown by the evidence for the petitioner disputed.

There was some evidence as to the capacity of the defendants' mills. The division of bonuses was based on an aggregate yearly output of 220,000 tons, but there are averments in the answer that indicate that this was not a statement of the actual limit of capacity, but was only taken as a standard of restricted output upon which to calculate an equitable division of bonuses. Nowhere in the large mass of affidavits is there any statement of the *per diem* capacity of the defendants' mills. Taking their aggregate capacity, however, as 220,000 tons, that of the other mills in the "pay" territory was 170,500 tons, and that of the mills in the "free" territory was 348,000 tons, according to the affidavit of the chief officer of one of the defendants. Of the non-association mills in the

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"pay" territory one was at Pueblo, Colorado, another was in the state penitentiary at Waco, Texas, and a third in Oregon. Their aggregate annual capacity was 45,500 tons. Another non-association mill was the Shickle, Howard-Harrison mill of St. Louis, Missouri, with a capacity of 12,000 tons. John W. Harrison, who was president of this company, was also president of the Howard-Harrison mill at Bessemer, Alabama, which was a member of the association, and it appears that an order taken by the Bessemer mill at St. Louis was partly filled by the St. Louis mill. The other mills in the "pay" territory were one at Columbus, Ohio, with an annual capacity of 30,000 tons, one at Cleveland, Ohio, of 60,000 tons, one at New Comerstown, in northeastern Ohio, of 8000 tons, and one at Detroit, Michigan, of 15,000 tons, and their aggregate annual capacity was 113,000 tons. In the "free" territory there was one mill in eastern Virginia with an annual capacity of 16,000 tons, four mills in eastern Pennsylvania with a capacity of 87,000 tons, three mills in New Jersey with a capacity of 210,000 tons, and two mills at New York, one at Utica and another at Buffalo, with an aggregate capacity of 35,000 tons.

The evidence was scanty as to rates of freight upon iron pipes, but enough appeared to show that the advantage in freight rates which the defendants had over the large pipe foundries in New York, eastern Pennsylvania and New Jersey in bidding on contracts to deliver pipe in nearly all of the "pay" territory varied from \$2.00 to \$6.00 a ton, according to the location.

The defendants filed the affidavits of their managing officers, in which they stated generally that the object of their association was not to raise prices beyond what was reasonable, but only to prevent ruinous competition between defendants which would have carried prices far below a reasonable point; that the bonuses charged were not exorbitant profits and additions to a reasonable price, but they were deductions from a reasonable price in the nature of a penalty or burden intended to curb the natural disposition of each member to get all the business possible and more than his due proportion; that the prices fixed by the association were always reasonable and

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were always fixed, as they must have been, with reference to the very active competition of other pipe manufacturers for every job; that the reason why they sold pipe at so much cheaper rates in the "free" territory than in the "pay" territory was because they were willing to sell at a loss to keep their mills going rather than to stop them; that the prices at a city like St. Louis, in which the specifications were detailed and precise, were higher because pipe had to be made especially for the job and they could not use stock on hand.

*Mr. Frank Spurlock* (with whom was *Mr. Foster V. Brown* on his brief) and *Mr. John W. Warrington* for appellants, cited in their briefs: *Printing and Numerical Reg. Co. v. Sampson*, L. R. 19 Eq. 462, 465; *Rousillon v. Rousillon*, 14 Ch. Div. 351, 365; *National Benefit Co. v. Union Hospital Co.*, 45 Minnesota, 272; *Oregon Steam Navigation Co. v. Winsor*, 20 Wall. 64, 68; *Oakdale Manufacturing Co. v. Garst*, 18 R. I. 484; *Tode v. Gross*, 127 N. Y. 480; *Shrainka v. Scharringhausen*, 8 Mo. App. 522; *Beal v. Chase*, 31 Michigan, 490; *Dolph v. Troy Laundry Machinery Co.*, 28 Fed. Rep. 553; *S. C.*, 138 U. S. 617; *Kellogg v. Larkin*, 3 Pinney, (Winconsin,) 123; *Dueber Watch Case Manufacturing Co. v. E. Howard Watch & Clock Co.*, 35 U. S. App. 16; *Central Shade Roller Co. v. Cushman*, 143 Mass. 353; *Diamond Match Co. v. Roeber*, 106 N. Y. 473; *Leslie v. Lorillard*, 110 N. Y. 519; *Gibbs v. Baltimore Gas Co.*, 130 U. S. 396; *United States v. Trans Missouri Freight Ass'n*, 166 U. S. 290; *Eastman v. Clark*, 53 N. H. 276; *Mayrant v. Marston*, 67 Alabama, 453; *Fay v. Davidson*, 13 Minnesota, 523; *Wickens v. Evans*, 3 Younge & Jervis, 318; *Nat. Benefit Co. v. Union Hospital Co.*, 45 Minnesota, 272; *Hubbard v. Miller*, 27 Michigan, 15; *Robbins v. Shelby County Taxing District*, 120 U. S. 489; *Emert v. Missouri*, 156 U. S. 296; *Asher v. Texas*, 128 U. S. 129; *Stoutenburgh v. Hennick*, 129 U. S. 141; *Brennan v. Titusville*, 153 U. S. 289, 307; *Hopkins v. United States*, 171 U. S. 578; *Bohn Manufacturing Co. v. Hollis*, 54 Minnesota, 223; *United States v. E. C. Knight Co.*, 156 U. S. 1; *Brown v. Maryland*, 12 Wheat. 419; *State*

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*Freight Tax case*, 15 Wallace, 232; *Coe v. Errol*, 116 U. S. 517; *Kidd v. Pearson*, 128 U. S. 1; *Welton v. Missouri*, 91 U. S. 275; *In re Greene*, 52 Fed. Rep. 104; *Paul v. Virginia*, 8 Wall. 168; *Civil Rights cases*, 109 U. S. 3; *In re Debs*, 158 U. S. 564; *Scudder v. Union Nat'l Bank*, 91 U. S. 406; *United States v. De Witt*, 9 Wall. 41; *License Tax cases*, 5 Wall. 462; *In re Rahrer*, 140 U. S. 545; *Patterson v. Kentucky*, 97 U. S. 501; *Barron v. Baltimore*, 7 Pet. 243; *Monongahela Nav. Co. v. United States*, 148 U. S. 312; *Munn v. Illinois*, 94 U. S. 113; *Budd v. New York*, 143 U. S. 517; *United States v. Joint Traffic Association*, 171 U. S. 505; *Anderson v. United States*, 171 U. S. 604; *N. Y., Lake Erie & Western Railroad v. Pennsylvania*, 158 U. S. 431; *Pittsburgh & Southern Coal Co. v. Bates*, 156 U. S. 577; *Adams Express Co. v. Ohio*, 165 U. S. 194; *S. C.*, 166 U. S. 185; *Brennan v. Titusville*, 153 U. S. 289; *Pettibone v. United States*, 148 U. S. 197; *Powell v. Pennsylvania*, 127 U. S. 678; *Railroad Co. v. Richmond*, 19 Wall. 584; *Munn v. Illinois*, 94 U. S. 113; *Dow v. Beidelman*, 125 U. S. 680; *Budd v. New York*, 143 U. S. 517; *Packet Co. v. Keokuk*, 95 U. S. 80; *Allgeyer v. Louisiana*, 165 U. S. 578; *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 746; *Boyd v. United States*, 116 U. S. 616.

*Mr. Solicitor General* for the United States.

MR. JUSTICE PECKHAM, after stating the case, delivered the opinion of the court.

The foregoing statement, which has been mainly taken from that preceding the opinion of Circuit Judge Taft, delivered in this case in the Circuit Court of Appeals, comprises, as we think, all that is essential to the discussion of the questions arising in this case, and we believe the statement to be fully borne out as to the facts, by the evidence set forth in the record.

Assuming, for the purpose of the argument, that the contract in question herein does directly and substantially operate as a restraint upon and as a regulation of interstate commerce, it is yet insisted by the appellants at the threshold of the

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inquiry that by the true construction of the Constitution, the power of Congress to regulate interstate commerce is limited to its protection from acts of interference by state legislation or by means of regulations made under the authority of the State by some political subdivision thereof, including also Congressional power over common carriers, elevator, gas and water companies, for reasons stated to be peculiar to such carriers and companies, but that it does not include the general power to interfere with or prohibit private contracts between citizens, even though such contracts have interstate commerce for their object, and result in a direct and substantial obstruction to or regulation of that commerce.

This argument is founded upon the assertion that the reason for vesting in Congress the power to regulate commerce was to insure uniformity of regulation against conflicting and discriminating state legislation; and the further assertion that the Constitution guarantees liberty of private contract to the citizen at least upon commercial subjects, and to that extent the guaranty operates as a limitation on the power of Congress to regulate commerce. Some remarks are quoted from the opinions of Chief Justice Marshall, in *Gibbons v. Ogden*, 9 Wheat. 1, and *Brown v. Maryland*, 12 Wheat. 419, and from the opinions of other justices of this court in the cases of *The State Freight Tax*, 15 Wall. 232, 275; *Railroad Company v. Richmond*, 19 Wall. 584, 589; *Welton v. Missouri*, 91 U. S. 275, 280; *Mobile County v. Kimball*, 102 U. S. 691, 697, and *Kidd v. Pearson*, 128 U. S. 1, 21, all of which are to the effect that the object of vesting in Congress the power to regulate interstate commerce was to insure uniformity of regulation against conflicting and discriminating state legislation. The further remark is quoted from *Railroad Company v. Richmond*, *supra*, that the power of Congress to regulate commerce was never intended to be exercised so as to interfere with private contracts not designed at the time they were made to create impediments to such commerce. It is added that the proof herein shows that the contract in this case was not so designed.

It is undoubtedly true that among the reasons, if not the



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strongest reason, for placing the power in Congress to regulate interstate commerce, was that which is stated in the extracts from the opinions of the court in the cases above cited.

The reasons which may have caused the framers of the Constitution to repose the power to regulate interstate commerce in Congress do not, however, affect or limit the extent of the power itself.

In *Gibbons v. Ogden*, (*supra*), the power was declared to be complete in itself, and to acknowledge no limitations other than are prescribed by the Constitution.

Under this grant of power to Congress, that body, in our judgment, may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract will be, when carried out, to directly, and not as a mere incident to other and innocent purposes, regulate to any substantial extent interstate commerce. (And when we speak of interstate we also include in our meaning foreign commerce.) We do not assent to the correctness of the proposition that the constitutional guaranty of liberty to the individual to enter into private contracts limits the power of Congress and prevents it from legislating upon the subject of contracts of the class mentioned.

The power to regulate interstate commerce is, as stated by Chief Justice Marshall, full and complete in Congress, and there is no limitation in the grant of the power which excludes private contracts of the nature in question from the jurisdiction of that body. Nor is any such limitation contained in that other clause of the Constitution which provides that no person shall be deprived of life, liberty or property without due process of law. It has been held that the word "liberty," as used in the Constitution, was not to be confined to the mere liberty of person, but included, among others, a right to enter into certain classes of contracts for the purpose of enabling the citizen to carry on his business. *Allgeyer v. Louisiana*, 165 U. S. 578; *United States v. Joint Traffic Association*, 171 U. S. 505, 572. But it has never been, and in our opinion ought not to be, held that the word included



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the right of an individual to enter into private contracts upon all subjects, no matter what their nature and wholly irrespective (among other things) of the fact that they would, if performed, result in the regulation of interstate commerce and in the violation of an act of Congress upon that subject. The provision in the Constitution does not, as we believe, exclude Congress from legislating with regard to contracts of the above nature while in the exercise of its constitutional right to regulate commerce among the States. On the contrary, we think the provision regarding the liberty of the citizen is, to some extent, limited by the commerce clause of the Constitution, and that the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally and collaterally, regulate to a greater or less degree commerce among the States.

We cannot so enlarge the scope of the language of the Constitution regarding the liberty of the citizen as to hold that it includes or that it was intended to include a right to make a contract which in fact restrained and regulated interstate commerce, notwithstanding Congress, proceeding under the constitutional provision giving to it the power to regulate that commerce, had prohibited such contracts.

While unfriendly or discriminating legislation of the several States may have been the chief cause for granting to Congress the sole power to regulate interstate commerce, yet we fail to find in the language of the grant any such limitation of that power as would exclude Congress from legislating on the subject and prohibiting those private contracts which would directly and substantially, and not as a mere incident, regulate interstate commerce.

If certain kinds of private contracts do directly, as already stated, limit or restrain, and hence regulate interstate commerce, why should not the power of Congress reach those contracts just the same as if the legislation of some State had enacted the provisions contained in them? The private contracts may in truth be as far reaching in their effect upon

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interstate commerce as would the legislation of a single State of the same character.

In the *Debs case*, 158 U. S. 564, it was said by Mr. Justice Brewer, speaking for the court: "It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of state legislation in its bearing upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a State to legislate in such a manner as to obstruct interstate commerce. If a State, with its recognized power of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?"

What sound reason can be given why Congress should have the power to interfere in the case of the State, and yet have none in the case of the individual? Commerce is the important subject of consideration, and anything which directly obstructs and thus regulates that commerce which is carried on among the States, whether it is state legislation or private contracts between individuals or corporations, should be subject to the power of Congress in the regulation of that commerce.

The power of Congress over this subject seems to us much more important and necessary than the liberty of the citizen to enter into contracts of the nature above mentioned, free from the control of Congress, because the direct results of such contracts might be the regulation of commerce among the States, possibly quite as effectually as if a State had passed a statute of like tenor as the contract.

The liberty of contract in such case would be nothing more than the liberty of doing that which would result in the regulation, to some extent, of a subject which from its general and great importance has been granted to Congress as the proper representative of the nation at large. Regulation, to any substantial extent, of such a subject by any other power than that of Congress, after Congress has itself acted thereon, even

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though such regulation is effected by means of private contracts between individuals or corporations, is illegal, and we are unaware of any reason why it is not as objectionable when attempted by individuals as by the State itself. In both cases it is an attempt to regulate a subject which, for the purpose of regulation, has been, with some exceptions, such as are stated in *Mobile County v. Kimball*, 102 U. S. 691, 697; *Morgan v. Louisiana*, 118 U. S. 455, 465; *Bowman v. Chicago & N. W. Railway*, 125 U. S. 465; *Western Union Telegraph Co. v. James*, 162 U. S. 650, 655, exclusively granted to Congress; and it is essential to the proper execution of that power that Congress should have jurisdiction as much in the one case as in the other.

It is, indeed, urged that to include private contracts of this description within the grant of this power to Congress is to take from the States their own power over the subject, and to interfere with the liberty of the individual in a manner and to an extent never contemplated by the framers of the Constitution, and not fairly justified by any language used in that instrument. If Congress has not the power to legislate upon the subject of contracts of the kind mentioned, because the constitutional provision as to the liberty of the citizen limits, to that extent, its power to regulate interstate commerce, then it would seem to follow that the several States have that power, although such contracts relate to interstate commerce, and, more or less, regulate it. If neither Congress nor the state legislatures have such power, then we are brought to the somewhat extraordinary position that there is no authority, state or national, which can legislate upon the subject of or prohibit such contracts. This cannot be the case.

If it should be held that Congress has no power and the state legislatures have full and complete authority to thus far regulate interstate commerce by means of their control over private contracts between individuals or corporations, then the legislation of the different States might and probably would differ in regard to the matter, according to what each State might regard as its own particular interest. One State

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might condemn all kinds of contracts of the class described, while another might permit the making of all of them, while still another might permit some and prohibit others, and thus great confusion would ensue, and it would be difficult in many cases to know just what law was applicable to any particular contract regarding and regulating interstate commerce. At the same time contracts might be made between individuals or corporations of such extent and magnitude as to seriously affect commerce among the States. These consequences would seemingly necessarily follow if it were decided that the state legislatures had control over the subject to the extent mentioned.

It is true, so far as we are informed, that no state legislature has heretofore authorized by affirmative legislation the making of contracts upon the matter of interstate commerce of the nature now under discussion. Nor has it, in terms, condemned them. The reason why no state legislation upon the subject has been enacted has probably been because it was supposed to be a subject over which state legislatures had no jurisdiction. If it should be decided that they have, then the course of legislation of the different States on this subject would probably be as varied as we have already indicated.

On the other hand, if it be true that in no event could a state legislature enact a law affirmatively authorizing such contracts, (even if Congress had no jurisdiction over the subject,) because in so doing it would to a greater or less extent itself thereby, though indirectly, regulate interstate commerce, then the question whether such contracts were legal without legislative sanction would depend upon the decisions of the various state courts having jurisdiction in the cases, and in that event, as the same question might arise in different States, there would be great probability of inconsistent and contradictory decisions among the courts of the different States, and that, too, upon questions of contracts amounting to the regulation of interstate commerce. It is true that under our system of government there are numerous subjects over which the States have exclusive jurisdiction, resulting in the enact-

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ment of different laws upon the same subject in various States, and also in varying and inconsistent judicial judgments in the different States upon the same subject. That condition has never been regarded as an end in itself desirable. It undoubtedly results in some confusion as to the law applicable to the particular case, and in many instances thereby increases the cost and renders doubtful the result of the litigation arising under such circumstances. They are results and the necessary accompaniment of the division of sovereignty between the States on the one hand and the Federal Government on the other, and yet the enormous and inestimable benefits arising from the existence of separate, independent and sovereign States have completely submerged the comparatively minor evils of inconsistent judgments and different laws upon many of the subjects over which the States have exclusive jurisdiction. But upon the matter of interstate and foreign commerce and the proper regulation thereof, the subject being not alone national but international in its character, the great importance of having but one source for the law which regulates that commerce throughout the length and breadth of the land cannot in our opinion be overestimated. Each State in that event would have complete jurisdiction over the commerce which was wholly within its own borders, while the jurisdiction of Congress, under the provisions of the Constitution, over interstate commerce would be paramount, and would include therein jurisdiction over contracts of the nature we have been discussing.

The remark in *Railroad Company v. Richmond*, (*supra*), that it was never intended that the power of Congress should be exercised so as to interfere with private contracts not designed at the time they were made to create impediments to interstate commerce, when read in connection with the facts stated in the report, is entirely sound. It therein appears that a contract had been made between the parties, as to the erection of an elevator and the business to be done by it, which contract was valid when made. Subsequently Congress passed acts relating to the construction of bridges over rivers and streams and authorizing railroads to carry pas-

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sengers on their way from one State to another. The railroad company becoming tired of its contract with the elevator company, desired to take advantage of this legislation and contended that under it, the contract which it had theretofore made with the elevator company became void as an obstacle to or a regulation of commerce. The court held that contracts which were valid when made continue valid and capable of enforcement, so long, at least, as peace lasts between the governments of the contracting parties, notwithstanding a change in the condition of business which originally led to their creating. It was then added that it never was intended that the power of Congress should be exercised so as to interfere with private contracts not designed at the time they were made to create impediments to interstate commerce.

There is no intimation in this remark that Congress has no power to legislate regarding those contracts which do directly regulate and restrain interstate commerce. The inference is quite the reverse, and it is plain that the case assumes if private contracts when entered into do directly interfere with and regulate interstate commerce, Congress had power to condemn them. If the necessary, direct and immediate effect of the contract be to violate an act of Congress and also to restrain and regulate interstate commerce, it is manifestly immaterial whether the design to so regulate was or was not in existence when the contract was entered into. In such case the design does not constitute the material thing. The fact of a direct and substantial regulation is the important part of the contract, and that regulation existing, it is unimportant that it was not designed.

Where the contract affects interstate commerce only incidentally and not directly, the fact that it was not designed or intended to affect such commerce is simply an additional reason for holding the contract valid and not touched by the act of Congress. Otherwise the design prompting the execution of a contract pertaining to and directly affecting, and more or less regulating, interstate commerce is of no importance. We conclude that the plain language of the grant to Congress of power to regulate commerce among the several

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States includes power to legislate upon the subject of those contracts in respect to interstate or foreign commerce which directly affect and regulate that commerce, and we can find no reasonable ground for asserting that the constitutional provision as to the liberty of the individual limits the extent of that power as claimed by the appellants. We therefore think the appellants have failed in their contention upon this branch of subject.

We are thus brought to the question whether the contract or combination proved in this case is one which is either a direct restraint or a regulation of commerce among the several States or with foreign nations contrary to the act of Congress. It is objected on the part of the appellants that even if it affected interstate commerce the contract or combination was only a reasonable restraint upon a ruinous competition among themselves, and was formed only for the purpose of protecting the parties thereto in securing prices for their product that were fair and reasonable to themselves and the public. It is further objected that the agreement does not come within the act because it is not one which amounts to a regulation of interstate commerce, as it has no direct bearing upon or relation to that commerce, but that on the contrary the case herein involves the same principles which were under consideration in *United States v. E. C. Knight Company*, 156 U. S. 1, and, in accordance with that decision, the bill should be dismissed.

Referring to the first of these objections to the maintenance of this proceeding, we are of opinion that the agreement or combination was not one which simply secured for its members fair and reasonable prices for the article dealt in by them. Even if the objection thus set up would, if well founded in fact, constitute a defence, we agree with the Circuit Court of Appeals in its statement of the special facts upon this branch of the case and with its opinion thereon as set forth by Circuit Judge Taft, as follows :

"The defendants being manufacturers and vendors of cast-iron pipe entered into a combination to raise the prices for pipe for all the States west and south of New York, Pennsylvania



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and Virginia, constituting considerably more than three quarters of the territory of the United States, and significantly called by the associates 'pay' territory. Their joint annual output was 220,000 tons. The total capacity of all the other cast-iron pipe manufacturers in the 'pay' territory was 170,500 tons. Of this, 45,000 tons was the capacity of mills in Texas, Colorado and Oregon, so far removed from that part of the 'pay' territory where the demand was considerable that necessary freight rates excluded them from the possibility of competing, and 12,000 tons was the possible annual capacity of a mill at St. Louis, which was practically under the same management as that of one of the defendants' mills. Of the remainder of the mills in 'pay' territory and outside of the combination, one was at Columbus, Ohio, two in northern Ohio, and one in Michigan. Their aggregate possible annual capacity was about one half the usual annual output of the defendants' mills. They were, it will be observed, at the extreme northern end of the 'pay' territory, while the defendants' mills at Cincinnati, Louisville, Chattanooga and South Pittsburg, and Anniston and Bessemer were grouped much nearer to the centre of the 'pay' territory. The freight upon cast-iron pipe amounts to a considerable percentage of the price at which manufacturers can deliver it at any great distance from the place of manufacture. Within the margin of the freight per ton which Eastern manufacturers would have to pay to deliver pipe in 'pay' territory, the defendants, by controlling two thirds of the output in 'pay' territory, were practically able to fix prices. The competition of the Ohio and Michigan mills of course somewhat affected their power in this respect in the northern part of the 'pay' territory, but the further south the place of delivery was to be, the more complete the monopoly over the trade which the defendants were able to exercise, within the limits already described. Much evidence is adduced upon affidavit to prove that defendants had no power arbitrarily to fix prices and that they were always obliged to meet competition. To the extent that they could not impose prices on the public in excess of the cost price of pipe with freight from the Atlan-

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tic seaboard added, this is true, but within that limit they could fix prices as they chose. The most cogent evidence that they had this power is the fact everywhere apparent in the record that they exercised it. The details of the way in which it was maintained are somewhat obscured by the manner in which the proof was adduced in the court below upon affidavits solely, and without the clarifying effect of cross-examination, but quite enough appears to leave no doubt of the ultimate fact.

"The defendants were by their combination therefore able to deprive the public in a large territory of the advantages otherwise accruing to them from the proximity of defendants' pipe factories and, by keeping prices just low enough to prevent competition by Eastern manufacturers, to compel the public to pay an increase over what the price would have been if fixed by competition between defendants, nearly equal to the advantage in freight rates enjoyed by defendants over Eastern competitors. The defendants acquired this power by voluntarily agreeing to sell only at prices fixed by their committee and by allowing the highest bidder at the secret 'auction pool' to become the lowest bidder of them at the public letting. Now, the restraint thus imposed on themselves was only partial. It did not cover the United States. There was not a complete monopoly. It was tempered by the fear of competition and it affected only a part of the price. But this certainly does not take the contract of association out of the annulling effect of the rule against monopolies. In *United States v. E. C. Knight Company*, 156 U. S. 1, 16, Chief Justice Fuller, in speaking for the court, said: 'Again all the authorities agree that in order to vitiate a contract or combination, it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.'

"It has been earnestly pressed upon us that the prices at which the cast-iron pipe was sold in 'pay' territory were reasonable. A great many affidavits of purchasers of pipe in 'pay' territory, all drawn by the same hand or from the same model, are produced, in which the affiants say that in their

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opinion the prices at which pipe has been sold by defendants have been reasonable. We do not think the issue an important one, because, as already stated, we do not think that at common law there is any question of reasonableness open to the courts with reference to such a contract. Its tendency was certainly to give defendants the power to charge unreasonable prices, had they chosen to do so. But if it were important we should unhesitatingly find that the prices charged in the instances which were in evidence were unreasonable. The letters from the manager of the Chattanooga foundry written to the other defendants and discussing the prices fixed by the association, do not leave the slightest doubt upon this point, and outweigh the perfunctory affidavits produced by the defendants. The cost of producing pipe at Chattanooga, together with a reasonable profit, did not exceed \$15 a ton. It could have been delivered at Atlanta at \$17 to \$18 a ton, and yet the lowest price which that foundry was permitted by the rules of the association to bid was \$24.25. The same thing was true all through 'pay' territory to a greater or less degree, and especially at 'reserved' cities."

The facts thus set forth show conclusively that the effect of the combination was to enhance prices beyond a sum which was reasonable, and therefore the first objection above set forth need not be further noticed.

We are also of opinion that the direct effect of the agreement or combination is to regulate interstate commerce, and the case is therefore not covered by that of *United States v. E. C. Knight Company*, *supra*. It was there held that although the American Sugar Refining Company, by means of the combination referred to, had obtained a practical monopoly of the business of manufacturing sugar, yet the act of Congress did not touch the case, because the combination only related to manufacture and not to commerce among the States or with foreign nations. The plain distinction between manufacture and commerce was pointed out, and it was observed that a contract or combination which directly related to manufacture only was not brought within the purview of the act, although as an indirect and incidental result of such combina-

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tion commerce among the States might be thereafter somewhat affected. Mr. Chief Justice Fuller, in delivering the opinion of the court, spoke of the distinction between the two subjects, and said:

"The argument is that the power to control the manufacture of refined sugar is a monopoly over a necessity of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that, therefore, the General Government, in the exercise of the power to regulate commerce, may repress such monopoly directly and set aside the instruments which have created it.

"Doubtless, the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture and is not a part of it.

\* \* \* \* \*

"It will be perceived how far reaching the proposition is that the power of dealing with a monopoly directly may be exercised by the General Government whenever interstate or international commerce may be ultimately affected. The regulation of commerce applies to the subjects of commerce and not to matters of internal police. Contracts to buy, sell or exchange goods to be transported among the several States, the transportation and its instrumentalities, and articles bought, sold or exchanged for the purposes of such transit among the States, or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce.

\* \* \* \* \*

"There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we

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have seen, that trade or commerce might be indirectly affected, was not enough to entitle complainants to a decree."

The direct purpose of the combination in the *Knight case* was the control of the manufacture of sugar. There was no combination or agreement, in terms, regarding the future disposition of the manufactured article; nothing looking to a transaction in the nature of interstate commerce. The probable intention on the part of the manufacturer of the sugar to thereafter dispose of it by sending it to some market in another State, was held to be immaterial and not to alter the character of the combination. The various cases which had been decided in this court relating to the subject of interstate commerce, and to the difference between that and the manufacture of commodities, and also the police power of the States as affected by the commerce clause of the Constitution, were adverted to, and the case was decided upon the principle that a combination simply to control manufacture was not a violation of the act of Congress, because such a contract or combination did not directly control or affect interstate commerce, but that contracts for the sale and transportation to other States of specific articles were proper subjects for regulation because they did form part of such commerce.

We think the case now before us involves contracts of the nature last above mentioned, not incidentally or collaterally, but as a direct and immediate result of the combination engaged in by the defendants.

While no particular contract regarding the furnishing of pipe and the price for which it should be furnished was in the contemplation of the parties to the combination at the time of its formation, yet it was their intention, as it was the purpose of the combination, to directly and by means of such combination increase the price for which all contracts for the delivery of pipe within the territory above described should be made, and the latter result was to be achieved by abolishing all competition between the parties to the combination. The direct and immediate result of the combination was therefore necessarily a restraint upon interstate commerce in respect of arti-

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cles manufactured by any of the parties to it to be transported beyond the State in which they were made. The defendants by reason of this combination and agreement could only send their goods out of the State in which they were manufactured for sale and delivery in another State, upon the terms and pursuant to the provisions of such combination. As pertinently asked by the court below, was not this a direct restraint upon interstate commerce in those goods?

If dealers in any commodity agreed among themselves that any particular territory bounded by state lines should be furnished with such commodity by certain members only of the combination, and the others would abstain from business in that territory, would not such agreement be regarded as one in restraint of interstate trade? If the price of the commodity were thereby enhanced, (as it naturally would be,) the character of the agreement would be still more clearly one in restraint of trade. Is there any substantial difference where, by agreement among themselves, the parties choose one of their number to make a bid for the supply of the pipe for delivery in another State, and agree that all the other bids shall be for a larger sum, thus practically restricting all but the member agreed upon from any attempt to supply the demand for the pipe or to enter into competition for the business? Does not an agreement or combination of that kind restrain interstate trade, and when Congress has acted by the passage of a statute like the one under consideration, does not such a contract clearly violate that statute?

As has frequently been said, interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities. *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196-203; *Kidd v. Pearson*, 128 U. S. 1, 20. If, therefore, an agreement or combination directly restrains not alone the manufacture, but the purchase, sale or exchange of the manufactured commodity among the several States, it is brought within the provisions of the statute. The power to regulate

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such commerce, that is, the power to prescribe the rules by which it shall be governed is vested in Congress, and when Congress has enacted a statute such as the one in question, any agreement or combination which directly operates, not alone upon the manufacture, but upon the sale, transportation and delivery of an article of interstate commerce, by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent and to the same extent trenches upon the power of the national legislature and violates the statute. We think it plain that this contract or combination effects that result.

The defendants allege, and it is true, that their business is not like a factory manufacturing an article of a certain kind for which there is at all times a demand, and which is manufactured without any regard to a particular sale or for a particular customer. In this respect as in many others the business differs radically from the sugar refiners. The business of defendants is carried on by obtaining particular contracts for the sale, transportation and delivery of iron pipe of a certain description, quality and strength, differing in different contracts as the intended use may differ. These contracts are, generally speaking, obtained at a public letting, at which there are many competitors, and the contract bid for includes, in its terms, the sale of the pipe and its delivery at the place desired, the cost of transportation being included in the purchase price of the pipe. The contract is one for the sale and delivery of a certain kind of pipe, and it is not generally essential to its performance that it should be manufactured for that particular contract, although sometimes it may be.

If the successful bidder had on hand iron pipe of the kind specified, or if he could procure it by purchase, he could in most cases deliver such pipe in fulfilment of his contract just the same as if he manufactured the pipe subsequently to the making of the contract and for the specific purpose of its performance. It is the sale and delivery, of a certain kind and quality of pipe, and not the manufacture, which is the material portion of the contract, and a sale for delivery beyond the State makes the transaction a part of interstate commerce. Municipal corporations and gas, railroad and water companies



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are among the chief customers for the pipe, and when they desire the article they give notice of the kind and quality, size, strength and purpose for which the pipe is desired, and announce that they will receive proposals for furnishing the same at the place indicated by them. Into this contest (and irrespective of the reserved cities) the defendants enter, not in truth as competitors, but under an agreement or combination among themselves which eliminates all competition between them for the contract, and permits one of their number to make his own bid and requires the others to bid over him. In certain sections of the country the defendants would have, by reason of their situation, such an advantage over all other competitors that there would practically be no chance for any other than one of their number to obtain the contract, unless the price bid was so exorbitant as to give others not so favorably situated an opportunity to snatch it from their hands. Under these circumstances, the agreement or combination of the defendants, entered into for that purpose and to directly obtain that desired result, would inevitably and necessarily give to the defendant, who was agreed upon among themselves to make the lowest bid, the contract desired and at a higher price than otherwise would have been obtained, and all the other parties to the combination would, by virtue of its terms, be restricted from an attempt to obtain the contract.

The combination thus had a direct, immediate and intended relation to and effect upon the subsequent contract to sell and deliver the pipe. It was to obtain that particular and specific result that the combination was formed, and but for the restriction the resulting high prices for the pipe would not have been obtained. It is useless for the defendants to say they did not intend to regulate or affect interstate commerce. They intended to make the very combination and agreement which they in fact did make, and they must be held to have intended (if in such case intention is of the least importance) the necessary and direct result of their agreement.

The cases of *Hopkins v. United States*, 171 U. S. 578, and *Anderson v. United States*, 171 U. S. 604, are not relevant. In the *Hopkins* case it was held that the business of the men-

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bers of the Kansas City Live Stock Exchange was not interstate commerce, and hence the act of Congress did not affect them; while in the *Anderson case* it was held that whether the members of the Traders' Live Stock Exchange were or were not engaged in the business of interstate commerce, was immaterial, as the agreement proved was not in restraint of trade, and did not regulate such commerce. It was said that when it is seen that the agreement entered into does not directly relate to and act upon and embrace interstate commerce, and that it was executed for another and entirely different purpose, and that it was calculated to attain it, the agreement would be upheld, if its effect upon that commerce were only indirect and incidental. The agreement involved in that case was held to be of such a character. The case we have here is of an entirely different nature, and is not covered or affected by the decisions cited.

It is also urged that as but one contract would be awarded for the work proposed at any place, and therefore only one person would secure it by virtue of being the lowest bidder, the selection by defendants of one of their number to make the lowest bid as among themselves could not operate as any restraint of trade; that the combination or agreement operated only to make a selection of that one who should have the contract by being the lowest bidder, and it did not in the most remote degree itself limit the number or extent of contracts, and therefore could not operate to restrain interstate trade. This takes no heed of the purpose and effect of the combination to restrain the action of the parties to it so that there shall be no competition among them to obtain the contract for themselves.

We have no doubt that where the direct and immediate effect of a contract or combination among particular dealers in a commodity is to destroy competition between them and others, so that the parties to the contract or combination may obtain increased prices for themselves, such contract or combination amounts to a restraint of trade in the commodity, even though contracts to buy such commodity at the enhanced price are continually being made. Total suppression of the

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trade in the commodity is not necessary in order to render the combination one in restraint of trade. It is the effect of the combination in limiting and restricting the right of each of the members to transact business in the ordinary way, as well as its effect upon the volume or extent of the dealing in the commodity, that is regarded. All the facts and circumstances are, however, to be considered in order to determine the fundamental question — whether the necessary effect of the combination is to restrain interstate commerce.

If iron pipe cost one hundred dollars a ton instead of the prices which the record shows were paid for it, no one, we think, would contend that the trade in it would amount to as much as if the lower prices prevailed. The higher price would operate as a direct restraint upon the trade, and therefore any contract or combination which enhanced the price might in some degree restrain the trade in the article. It is not material that the combination did not prevent the letting of any particular contract. Such was not its purpose. On the contrary, the more contracts to be let the better for the combination. It was formed not for the object of preventing the letting of contracts, but to restrain the parties to it from competing for contracts, and thereby to enhance the prices to be obtained for the pipe dealt in by those parties. And when by reason of the combination a particular contract may have been obtained for one of the parties thereto, but at a higher price than would otherwise have been paid, the charge that the combination was one in restraint of trade is not answered by the statement that the particular contract was in truth obtained and not prevented. The parties to such a combination might realize more profit by the higher prices they would secure than they could earn by doing more work at a much less price. The question is as to the effect of such combination upon the trade in the article, and if that effect be to destroy competition and thus advance the price, the combination is one in restraint of trade.

Decisions regarding the validity of taxation by or under state authority, involving sometimes the question of the point of time that an article intended for transportation beyond the

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State ceases to be governed exclusively by the domestic law and begins to be governed and protected by the national law of commercial regulation, are not of very close application here. The commodity may not have commenced its journey and so may still be completely within the jurisdiction of the State for purposes of state taxation, and yet at that same time the commodity may have been sold for delivery in another State. Any combination among dealers in that kind of commodity, which in its direct and immediate effect, forecloses all competition and enhances the purchase price for which such commodity would otherwise be delivered at its destination in another State, would in our opinion be one in restraint of trade or commerce among the States, even though the article to be transported and delivered in another State were still taxable at its place of manufacture.

It is said that a particular business must be distinguished from its mere subjects, and from the instruments by which the business is carried on; that in most cases of a large manufacturing company it could only be carried on by shipping products from one State to another, and that the business of such an establishment would be related to interstate commerce only incidentally and indirectly. This proposition we are not called upon to deny. It is not, however, relevant. Where the contract is for the sale of the article and for its delivery in another State, the transaction is one of interstate commerce, although the vendor may have also agreed to manufacture it in order to fulfil his contract of sale. In such case a combination of this character would be properly called a combination in restraint of interstate commerce, and not one relating only to manufacture.

It is almost needless to add that we do not hold that every private enterprise which may be carried on chiefly or in part by means of interstate shipments is therefore to be regarded as so related to interstate commerce as to come within the regulating power of Congress. Such enterprises may be of the same nature as the manufacturing of refined sugar in the *Knight case*—that is, the parties may be engaged as manufacturers of a commodity which they thereafter intend at

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some time to sell, and possibly to sell in another State; but such sale we have already held is an incident to and not the direct result of the manufacture, and so is not a regulation of or an illegal interference with interstate commerce. That principle is not affected by anything herein decided.

The views above expressed lead generally to an affirmance of the judgment of the Court of Appeals. In one aspect, however, that judgment is too broad in its terms—the injunction is too absolute in its directions—as it may be construed as applying equally to commerce wholly within a State as well as to that which is interstate or international only. This was probably an inadvertence merely. Although the jurisdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce. It does not acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State, by reason of the fact that the combination also covers and regulates commerce which is interstate. The latter it can regulate, while the former is subject alone to the jurisdiction of the State. The combination herein described covers both commerce which is wholly within a State and also that which is interstate.

In regard to such of these defendants as might reside and carry on business in the same State where the pipe provided for in any particular contract was to be delivered, the sale, transportation and delivery of the pipe by them under that contract would be a transaction wholly within the State, and the statute would not be applicable to them in that case. They might make any combination they chose with reference to the proposed contract, although it should happen that some non-resident of the State eventually obtained it.

The fact that the proposal called for the delivery of pipe in the same State where some of the defendants resided and carried on their business would be sufficient, so far as the act of Congress is concerned, to permit those defendants to combine as they might choose, in regard to the proposed contract

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for the delivery of the pipe, and that right would not be affected by the fact that the contract might be subsequently awarded to some one outside the State as the lowest bidder. In brief, their right to combine in regard to a proposal for pipe deliverable in their own State could not be reached by the Federal power derived from the commerce clause in the Constitution.

To the extent that the present decree includes in its scope the enjoining of defendants thus situated from combining in regard to contracts for selling pipe in their own State, it is modified, and limited to that portion of the combination or agreement which is interstate in its character. As thus modified, the decree is

*Affirmed.*

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